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2012 IL App (4th) 120011-U

Filed 5/9/12

NO. 4-12-0011

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|----------------------|
| In re: G.C., L.C., and K.C., Minors, |) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| Petitioner-Appellee, |) | McLean County |
| v. |) | No. 11JA61 |
| ANNA CROWELL, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | Kevin P. Fitzgerald, |
| |) | Judge Presiding. |

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm the trial court's judgment establishing a permanency goal for a minor that he remain with his biological father rather than be returned to his mother and her husband, where the court satisfactorily weighed relevant considerations, including its findings that (1) the biological father was the only fit parent and (2) the age of the child and his siblings (whose permanency goal was their return to their mother) was such that strong bonds had not developed between them.
- ¶ 2 This custody case involves the minor children G.C., born February 13, 2011, L.C., born August 17, 2009, and K.C., born December 2, 2007, who have been removed from the care of respondent mother Anna Crowell and her husband, respondent Joshua Crowell. In November 2011, the trial court entered a dispositional order establishing permanency goals that L.C. remain with his biological father, Russell Webb, and that L.C.'s two half-siblings return home to Anna and Joshua in 12 months. Anna appeals the dispositional order, arguing the court erred in setting L.C.'s permanency goal. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 Anna is married to Joshua. She is the mother of G.C., L.C., and K.C. Joshua is G.C. and K.C.'s biological father. Webb, with whom Anna had a relationship during a separation from Joshua, is L.C.'s biological father. Before these proceedings, Webb had never been L.C.'s primary or full-time caretaker but had had some unspecified amount of contact with him.

¶ 5 In May 2011, the Department of Children and Family Services (DCFS) received a hospital social worker's report that newborn G.C. was receiving inadequate care from her parents. G.C. was born prematurely with a hole in her heart and chronic lung disease. She remained in the hospital for more than two months immediately following her birth; employees of the hospital noted that the parents visited infrequently during this time. G.C. was released and was readmitted nine days later, having gained less weight than expected. When G.C. was released again, the doctor caring for G.C. issued a discharge summary for the parents, stating, "Do not smoke; if you do smoke, stop." Anna and Joshua had been informed that even residual cigarette smoke on their clothing would be harmful to G.C. due to her lung disease. G.C. was readmitted two days later, "reeking" of cigarette smoke and having lost weight while in her parents' care. She was diagnosed with pneumonia and "non-organic failure to thrive." Doctors expressed concerns that Anna and Joshua had not been giving G.C. her prescribed medication.

¶ 6 When DCFS began investigating the reports of G.C.'s neglect, Anna, Joshua, L.C., and K.C. were already subject to an open intact family case. In April 2011, DCFS had indicated Joshua for risk of sexual abuse due to allegations that, in August 2009, he had sex with the Crowells' 14-year-old babysitter. Joshua had admitted the allegations to the police. DCFS did not take protective custody of L.C. and K.C. but imposed a safety plan that required Joshua to

sleep apart from the rest of the family in a locked basement with an alarm on the door. Charges against Joshua for aggravated criminal sexual abuse remained pending throughout the trial court proceedings in this case, with a trial date eventually set for December 2011.

¶ 7 On May 27, 2011, the State filed a petition for adjudication of wardship with respect to G.C., L.C., and K.C. This petition alleged G.C. was neglected in that she received inadequate nutrition from her parents and was exposed to cigarette smoke against her doctor's orders. See 705 ILCS 405/2-3(1)(a) (West 2008). (This allegation was later dismissed.) Further, the petition alleged all three children were neglected in that they resided in an environment injurious to their welfare (1) when in Anna's care due to unresolved issues of domestic violence or anger management, creating a risk of harm; (2) when in Joshua's care due to unresolved issues of domestic violence or anger management, creating a risk of harm; and (3) when in Joshua's care due to his pending criminal charges and the safety plan requiring him to stay in the basement at night. See 705 ILCS 405/2-3(1)(b) (West 2008). G.C. had already been taken into protective custody and placed with Joshua's parents the previous day. The State requested shelter care for L.C. and K.C.

¶ 8 On May 31, 2011, DCFS filed a shelter-care report. This report chronicled the events that led to DCFS's involvement on behalf of the children as described above. It showed that Anna had been indicated for risk of harm by neglect with respect to K.C. in 2008 and that Joshua had been indicated for risk of sexual abuse and was subject to a continuing DCFS safety plan. Anna and Russell had no history of arrests or convictions. Joshua had been subject to two past orders of protection, convicted of one or two counts of larceny, and arrested four times, including his arrest for aggravated criminal sexual assault for which charges were pending.

¶ 9 Anna described to the DCFS employee who prepared the report "a pattern of domestic violence with Joshua as the perpetrator." Anna reported one instance when she was pregnant and Joshua shoved her to the ground during a dispute. She was uninjured. Though the police were called, no arrests were made. According to Anna, this was one of "many times" when Joshua physically threatened or abused her. She reported that Joshua was "controlling." Anna and Joshua had separated more than once but had reunited each time.

¶ 10 On the same day that DCFS filed a shelter-care report, the trial court held a shelter-care hearing. In accordance with the recommendations provided in the report, the court found probable cause and urgent necessity and granted temporary custody over the minors to DCFS. G.C. remained in foster care with her grandparents; L.C. and K.C. remained in Anna and Joshua's home subject to the safety plan.

¶ 11 In June 2011, DCFS received Joshua's sex-offender evaluation, which recommended that he have no unsupervised contact with children, including L.C. and K.C., due to an elevated risk of recidivism. Accordingly, DCFS removed L.C. and K.C. from Anna and Joshua's home and placed them with G.C. in Joshua's parents' home.

¶ 12 In July 2011, DCFS met with Webb to discuss the case. Webb's paternity of L.C. had been established by court-ordered deoxyribonucleic acid (DNA) testing. He was living with his girlfriend and her three children in a four-bedroom home. He informed the caseworker "that he would like to have [L.C.] home with him." His girlfriend supported his decision to seek custody of L.C. Visitations between Russell and L.C. were arranged.

¶ 13 On November 1, 2011, the trial court held an adjudicatory hearing. After hearing testimony, the court found the minors were neglected. Specifically, it found the State had proved

the allegations that the children's environment when in either Anna or Joshua's care was injurious to their welfare because Anna and Joshua's unresolved issues of domestic violence and anger management created a risk of harm to the children. On November 15, 2011, L.C. was removed from Joshua's parents' care and placed with Russell. G.C. and K.C. remained with Joshua's parents.

¶ 14 On November 23, 2011, a Catholic Charities caseworker filed a dispositional report regarding the parties' status and progress toward service-plan goals. The caseworker recommended that Webb be found fit. She stated that Webb's residence was adequate, clean, and appropriate for L.C. Webb had indicated that he "loves being a parent" and "would like very much to have the opportunity of being able to raise" L.C.

¶ 15 The caseworker recommended that Anna and Joshua be found unfit. Their housing was inadequate—they shared a two-bedroom residence with another couple who had said they would not allow children to reside there. Anna's parental rights with respect to a daughter who lived in Oklahoma were being terminated because "the state of Oklahoma [felt] that Ms. Crowell abandoned her daughter." Moreover, Anna exhibited depressive symptoms but failed or refused to follow up with recommended counseling. She expressed a desire to leave Joshua but said she worried that he would find her. Anna was unable to attend recommended domestic-violence counseling because of timing conflicts with her job.

¶ 16 The caseworker stated that Joshua refused to undergo sex-offender treatment. He was, according to the report, "very adamant about not taking treatment[,] stating he would never violate someone in a sexual manner. He has stated that he would kill someone if they ever touched his wife or kids in that manner." A concern that Joshua's participation in sex-offender

treatment would have undesired ramifications on his criminal proceedings was noted. Joshua was referred for a domestic-violence evaluation; although he attended his appointment, he refused to complete the assessment because, according to him, "the assessor was rude to him." He was referred to parenting classes but did not attend. He missed scheduled visits with the children.

¶ 17 With respect to Anna and Joshua's relationship, the caseworker expressed reservations. Specifically, she concluded: "Ms. Crowell and Mr. Crowell needs [*sic*] to attend couples counseling if they want to stay together as a family. There is a lengthy history of reports of order of protections [*sic*] against each other and filing for divorce. There has been indicated DCFS involvement in this family for the length of their marriage."

¶ 18 The report recommended permanency goals for each child. The caseworker recommended a goal for L.C. that he "remain home" with Russell and for G.C. and K.C. that they return home to Anna and Joshua within 12 months.

¶ 19 On November 30, 2011, the trial court held a dispositional hearing. The report was considered as evidence. Anna's counsel stated that he did not "object to the recommendations in the report." He did not specifically mention the proposed permanency goal for L.C. but concluded, "I think return in 12 [months] for the other two children is the appropriate goal."

¶ 20 The trial court adopted the recommendations of the dispositional report. It made all three children wards of the court. It found Russell fit and Anna and Joshua unfit. With respect to L.C.'s permanency goal, the court stated:

"I think it's [an] appropriate placement with Mr. Webb. There is

the concern that's just been fairly recent, certainly in terms of him being a full-time caretaker, and I'm certainly not in a position at this time to say that that ultimately is the best thing for [L.C.] It appears that placement is most appropriate when certainly now it may very well be a permanent solution. I'm always concerned about dividing siblings. Given their ages, I don't believe there's been much bonding between [L.C.] and [G.C.] given [G.C.'s] age and the medical issues she's had and their separation here."

The court set a permanency goal for L.C. of "remain home" with Webb and set a permanency goal for G.C. and K.C. of return home in 12 months.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Relying primarily on the trial court's determination that a goal of return home to Anna and Joshua in 12 months was appropriate for G.C. and K.C., Anna argues the court's determination of L.C.'s permanency goal was erroneous. We disagree.

¶ 24 Before discussing the merits of Anna's appeal, we address two initial arguments raised by the State. First, the State contends Anna's brief violates Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which "requires the contentions raised in the argument section of the brief to be supported by citation to legal authority and the pages of the record relied on, not the appendix" to the brief. *People v. Snow*, 2012 IL App (4th) 110415, ¶11, 2012 WL 78460 at *3. This court has stated that the failure to include appropriate citations to specific pages of the record "results in forfeiture of the argument." *Id.* The State notes the further requirement that

"[a]ll pages of the common[-]law record shall be numbered consecutively with the letter 'C' preceding the number of each page." Ill. S. Ct. R. 324 (eff. May 30, 2008).

¶ 25 The State may be suggesting that Anna's argument is forfeited due to noncompliance with Rule 341(h)(7) but does not explicitly argue the point. At any rate, we reject the State's contention. The pages of the common-law record in this case are not numbered. Anna appended the entire common-law record to her brief and numbered the pages of the appendix consecutively. In her brief, she refers to the page numbers of her appendix, not the common-law record. While this technically violates Rule 341(h)(7), the supreme court assigned the task of numbering the pages of the common-law record to the circuit clerk. Ill. S. Ct. R. 324 (eff. May 30, 2008) ("The clerk of the trial court shall prepare, bind, and certify the record on appeal."). The blame for the record's noncompliance with Rule 324's page-numbering requirement does not fall on the parties. Anna's citations to her appendix are acceptable in these circumstances. We emphasize that no discrepancies between the appendix and the common-law record have been brought to our attention. Further, we note that the State itself cites to Anna's appendix because the pages of the common-law record are unnumbered. As such, we find it inappropriate to apply the forfeiture penalty that ordinarily results from noncompliance with Rule 341(h)(7).

¶ 26 Second, the State argues Anna forfeited her argument by not objecting to L.C.'s permanency goal at the hearing. We agree with the State that Anna waived this argument when her counsel stated he would not object to the recommendations of the dispositional report. See *In re Ch. W.*, 408 Ill. App. 3d 541, 547, 948 N.E.2d 641, 648 (2011) ("[A] party forfeits its right to complain of an error where to do so would be inconsistent with the party's position in an earlier court proceeding. [Citation.] Additionally, a party cannot complain of error that it induced the

court to make or to which it consented."). "The rule of waiver, however, is a limitation on the parties and not on the courts." *In re Madison H.*, 215 Ill. 2d 364, 371, 830 N.E.2d 498, 503 (2005). Reviewing courts have ignored a party's waiver and proceeded to address the merits of an argument affecting a child's well-being or termination of parental rights, as in such situations the concern for reaching a just result often overrides considerations of waiver. See, e.g., *id.* Under the circumstances of this case, we elect to reach the merits of Anna's argument despite her waiver.

¶ 27 "We will reverse a trial court's dispositional determination only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re K.L.S.-P.*, 381 Ill. App. 3d 194, 195, 886 N.E.2d 516, 517 (2008). By employing these deferential standards of review, we acknowledge that the trial court occupies "a superior position to assess the credibility of witnesses and weigh the evidence." *In re April C.*, 326 Ill. App. 3d 225, 238, 760 N.E.2d 85, 96 (2001). Thus, we "will not overturn the trial court's findings merely because [we] may have reached a different decision." *Id.*

¶ 28 Section 2-28(2) of the Juvenile Court Act of 1987 (Act) states, in part, "In selecting any permanency goal, the court shall state in writing the reasons the goal was selected and why the preceding goals were ruled out." 705 ILCS 405/2-28(2) (West 2010). On review, this court considers a trial court's oral pronouncements together with its written order to ascertain the court's reasons for assigning a particular permanency goal. See, e.g., *In re D.S.*, 317 Ill. App. 3d 467, 472, 740 N.E.2d 54, 58 (2000). The Act provides that a court setting a permanency goal shall consider the following factors: (1) the child's age; (2) the available permanency options,

"including both out-of-State and in-State placement options"; (3) the child's current placement and the family's intent with respect to adoption; (4) the "[e]motional, physical, and mental status or condition of the child"; (5) the services previously offered, whether the services were successful, and "if not successful, the reasons the services failed"; (6) the availability of needed services; and (7) the status of the child's siblings. 705 ILCS 405/2-28(2) (West 2010). The Act further requires the court to consider (1) "the permanency goal contained in the service plan," (2) "the appropriateness of the services contained in the plan and whether those services have been provided," (3) "whether reasonable efforts have been made by all the parties to the service plan to achieve the goal," and (4) "whether the plan and goal have been achieved." 705 ILCS 405/2-28(2) (West 2010).

¶ 29 In this case, the trial court did not err in making factual findings and weighing the relevant factors toward establishing L.C.'s permanency goal. We initially note that the court did not err by finding, in accordance with the recommendations of the dispositional report, that Webb was fit and Anna and Joshua were not. Webb demonstrated his willingness and means to care for L.C. Anna and Joshua each showed an inability or unwillingness to complete recommended services and failed to secure adequate housing for all three children. It is against this background that we evaluate the court's consideration of the statutory factors.

¶ 30 The trial court considered L.C.'s placement with Webb, who was the only biological parent found to be fit, to be an available and desirable permanency option in light of Anna and Joshua's continuing unfitness. Webb had expressed his desire and intention of assuming primary parenting responsibilities with respect to L.C. Webb's live-in girlfriend supported his plan to have L.C. become a permanent member of their household. In his short

time as L.C.'s primary caretaker during these proceedings, Webb had taken measures to enroll L.C. in speech therapy to address developmental concerns that were unnoticed and unattended when L.C. was in Anna and Joshua's care. Webb had not required any services to become fit; Anna and Joshua, in contrast, had each failed or refused to avail themselves of recommended counseling and other services. The court stated it would have preferred to keep L.C. together with his siblings but found no significant sibling bonds had developed due to the minors' young ages. The overriding concern of the court in setting a goal that L.C. remain home with Webb was the promise Webb had shown as a caring and able parent. Given time, the selected permanency goal would allow the court to ensure Webb could sustain his fitness to parent L.C.

¶ 31 Anna's argument that the trial court's selection of L.C.'s permanency goal was unreasonable rests on the court's simultaneous finding that an appropriate goal for G.C. and K.C. was their return home to Anna and Joshua in 12 months. She claims the differing permanency goals are inconsistent. Her contention is unpersuasive. The court expressed its concern that, due to Joshua's unaddressed domestic-violence and anger-management issues and refusal to participate in sex-offender treatment, Anna's retention of her parental rights with respect to G.C. and K.C. was in jeopardy so long as she remained with Joshua. In finding Anna unfit, the court stated: "[Joshua] may be willing and able to complete all the services. If not, *** [Anna] would have to make some choices ultimately about whether she wants to stay with him. If he can't obtain fitness and she wants to be reunited with the children, then she would have to make a choice at that point. It appears she understands that."

¶ 32 The trial court found its concern over separating L.C. from his siblings was outweighed by its determination that L.C.'s permanent placement with Webb was more likely

than and preferable to his return to Anna and Joshua. It is apparent that if G.C. and K.C. had had a fit biological parent who presented an alternative permanency option to Anna and Joshua, the court would have placed them with that parent. L.C.'s circumstances were clearly different, warranting differential treatment. The court's weighing of these options was not erroneous in light of our deference to and the support of the court's determination in the recommendations of the dispositional report.

¶ 33

III. CONCLUSION

¶ 34

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

¶ 35

Affirmed.