

NOTICE
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2012 IL App (4th) 120294-U

Filed 8/22/12

NOS. 4-12-0294, 4-12-0295 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.N., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-12-0294))	No. 11JA62
ELLIS NASH,)	
Respondent-Appellant,)	
_____)	
In re: K.N., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-12-0295))	Honorable
TEANNA DAVIS,)	Richard P. Klaus,
Respondent-Appellant.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order making K.N. a ward of the court was not against the manifest weight of the evidence.

¶ 2 In December 2011, the State filed a petition for adjudication of neglect, alleging K.N. (born April 11, 2011), the minor child of respondent father, Ellis Nash (Ellis), and respondent mother, Teanna Davis (Teanna), was neglected.

¶ 3 Following a March 2012 dispositional hearing, the trial court adjudicated K.N. a ward of the court.

¶ 4 Respondents appeal, arguing the trial court erred by adjudicating K.N. a ward of the

court. We affirm.

¶ 5

I. BACKGROUND

¶ 6 According to the December 19, 2011, shelter-care report, police executed a search warrant on December 15, 2011, at Ellis's home. Ellis was suspected of being a fence for stolen goods. The report indicated police found drugs and stolen goods. Ellis, Teanna, and K.N. were present in the home at the time of the search. Ellis was arrested and charged with "Theft/Stolen property and possession of cannabis." K.N. was taken into protective custody.

¶ 7 On December 19, 2011, the State filed a two-count petition for adjudication of neglect, alleging K.N. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2010)) because the minor was residing in an environment injurious to her welfare in that she was exposed to criminal activity (count I) and substance abuse (count II).

¶ 8 At the February 22, 2012, adjudicatory hearing, Department of Children and Family Services (DCFS) investigator Barbara Traylor testified DCFS received a hotline report on December 15, 2011, regarding an eight-month-old infant who was placed at risk of harm by her parents. That report involved the events relating to the execution of the search warrant by police. Traylor questioned Teanna regarding the report. Initially, Teanna refused to answer any of Traylor's questions. When she did answer questions, she would tell Traylor her prior answers were lies and maintain her current answers were the truth. Traylor testified Teanna was basically telling her, it was not "any of DCFS[']s business what was going on."

¶ 9 Teanna also initially denied any drug use. However, when Traylor asked her if she would submit a urine sample, she told Traylor she used marijuana every day. Teanna told

Traylor DCFS should not be involved because she knew "crack heads that still ha[d] their babies." Teanna also initially denied knowing anything about any stolen property. However, when specifically asked about a laptop computer she had in her possession, Teanna told Traylor she knew it was stolen, but she did not report it because "she liked it." Teanna also told Traylor Ellis was "king" of a gang known as the Four Corner Hustlers and she was his representative. Teanna explained her role as taking care of Ellis and the baby and "hold[ing] down the house" for him.

¶ 10 Joseph Ferry, an investigator with the Champaign County sheriff's office, testified he interviewed Ellis in connection with an armed robbery investigation. The incident involved a man who reported being robbed at gunpoint of Valium pills, a cell phone, and other items after entering Ellis's residence. The victim identified Ellis as one of the men involved in robbing him. During the interview, Ellis admitted he met another man at his home "for the purpose of getting pills or having him meet other people to be able to distribute pills at his home." During the interview, Ellis also admitted being the leader of the Four Corner Hustlers, an affiliate of the Vice Lords street gang. Ellis also told Ferry he used Ecstasy, a drug, on the day of the interview and was concerned about providing bad information due to the drug's effects.

¶ 11 City of Urbana Police Investigator James Kerner testified he executed a search warrant on Ellis's residence on December 15, 2011, as a result of a tip regarding stolen property. Ellis, Teanna, and K.N. were present in the home at the time of the search. Ellis told Kerner he did not know anything about any stolen property. Police recovered a laptop computer matching the description of one reported stolen from a local school. Kerner testified the top of the computer had an engraving "that said Urbana School District." The computer also had a code or

serial number identifying it as belonging to the school district. Police also recovered a second laptop computer matching a description of one stolen from the Thomas Paine School. Ellis told Kerner he purchased that computer for \$100. While he suspected the computer was stolen, he did not attempt to return it. Kerner also testified Ellis admitted smoking cannabis on a daily basis.

¶ 12 Sylvia Morgan, a sergeant with the City of Urbana police department, accompanied Kerner during the execution of the search warrant. Morgan testified she recovered several items matching the description of items reported stolen. Morgan also recovered cannabis and pipes containing cannabis residue. Morgan testified there were also numerous "journal type books" present in the residence referencing the Vice Lord Nation and the Four Corner Hustlers.

¶ 13 Ellis testified at the hearing and denied being a member of the Four Corner Hustlers. He also denied receiving items he knew were stolen. However, he did admit using marijuana in the past.

¶ 14 Teanna testified at the hearing and denied using marijuana daily. She testified she told Traylor she suspected the laptop had been stolen but only after she already had it for a few weeks.

¶ 15 At the conclusion of the hearing, the trial court found the State proved K.N. was neglected as alleged in counts I and II "by a preponderance of the evidence" and "by clear and convincing evidence." The court also made extensive written findings. The court then allotted the matter for a dispositional hearing.

¶ 16 During the March 27, 2012, dispositional hearing, the trial court stated it considered the dispositional report prepared by Lutheran Social Services, the evidence presented

at the dispositional hearing and prior hearings, and the recommendations of counsel. With regard to Ellis, the dispositional report indicated the following. He admitted being affiliated with the Four Corner Hustlers since he was in the fourth grade. However, he walked away from the gang after being released from prison in 2005. He was currently the head of a group called the "Black Owl Clan." Ellis had prior convictions for theft, retail theft, and burglary, as well as the manufacture and delivery of cannabis. He maintained stable housing despite being unemployed since October 2010. Ellis "adamantly denied having any stolen goods or drugs in his home." Ellis "acknowledged that he recently used marijuana."

¶ 17 When asked for his recommendation on the matter, Teanna's attorney acknowledged it was "appropriate to make the child a ward of the court" and accepted "the court will indeed award custody and guardianship to [DCFS]." We note Teanna did not argue DCFS should in turn place the minor with her. Ellis's counsel stated Ellis considered himself a "very good father" and "did not want to [be] split from his daughter." Then counsel stated she thought Teanna's counsel's arguments were reasonable.

¶ 18 At the conclusion of the hearing, the trial court found it was in K.N.'s and the public's best interest she be made a ward of the court and adjudged neglected. The court found it was not in K.N.'s best interest to be in her parents' custody at that time. As a result, the court placed K.N. in the guardianship and custody of DCFS.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, both respondents argue the trial court erred by adjudicating K.N. a ward of the court. Specifically, they contend adjudicating K.N. a ward of the court was not in her best

interest. We disagree.

¶ 22 A. Standard of Review

¶ 23 Section 2-22 of the Juvenile Court Act provides "[a]t 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." 705 ILCS 405/2-22(1) (West 2010). A trial court's dispositional decision regarding a minor rests within its discretion and will not be overturned unless it is against the manifest weight of the evidence. See *In re J.C.*, 396 Ill. App. 3d 1050, 1060, 920 N.E.2d 1285, 1293 (2009). A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *In re Faith B.*, 216 Ill. 2d 1, 13-14, 832 N.E.2d 152, 159 (2005).

¶ 24 B. Ellis (No. 4-12-0294)

¶ 25 In this case, the trial court stated it considered the dispositional report, all the evidence presented at the dispositional hearing as well as prior hearings, and the recommendations of counsel before adjudicating K.N. a ward of the court. According to the evidence presented, K.N. was residing in a home that exposed her to daily drug use and criminal enterprise. While Ellis testified to the contrary, the trial court believed the testimony of the various law enforcement and DCFS personnel called by the State. It is not the function of the appellate court to substitute its judgment for that of the trier of fact in the area of witness credibility. *In re Jessica M.*, 399 Ill. App. 3d 730, 738, 928 N.E.2d 511, 518 (2010). Reviewing the record before us, we conclude the court's decision it was in K.N.'s best interest to be adjudicated a ward of the court was not against the manifest weight of the evidence.

¶ 26 C. Teanna (No. 4-12-0295)

¶ 27 During the dispositional hearing, Teanna's attorney agreed K.N. should be made a ward of the court. Teanna was present at the hearing and did not object to her counsel's statement. The rule of "invited error" provides a party cannot induce the trial court to proceed in a certain manner only to challenge that action as error on appeal. *People v. Major-Flisk*, 398 Ill. App. 3d 491, 500, 923 N.E.2d 324, 331 (2010); *People v. Carter*, 208 Ill. 2d 309, 319, 802 N.E.2d 1185, 1190 (2003) (under the invited-error doctrine, a party "may not request to proceed in one manner and then later contend on appeal that the course of action was in error"). Because Teanna consented to K.N. being made a ward of the court, she cannot now be heard to complain the trial court's dispositional decision was error.

¶ 28 Moreover, were we to consider Teanna's contention, we would find it meritless. Under the manifest weight standard of review, a reviewing court will not overturn a trial court's findings merely because the reviewing court may have reached a different decision. *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991). Here, the State presented sufficient evidence from which the trial court could reasonably find K.N. was exposed to criminal activity and drug use. Our review of the record in this case shows the opposite result is not clearly evident. See *In re C.N.*, 196 Ill. 2d 181, 208, 752 N.E.2d 1030, 1045-46 (2001). Thus, the trial court's decision it was in K.N.'s best interest to be adjudicated a ward of the court was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment in case Nos. 4-12-0294 and 4-12-0295.

¶ 31 No. 4-12-0294: Affirmed.

¶ 32

No. 4-12-0295: Affirmed.