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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

<i>In re</i> AALIYAH J., a Minor	)	
	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 12 JA 00081
	)	
Justin J.,	)	Honorable
Respondent-Appellant).	)	Nicholas Geanopoulos,
	)	Judge Presiding.
	)	

JUSTICE GORDON delivered the judgment of the court.  
Justices Hall and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* The juvenile court’s decision to make a two-year-old minor a ward of the court and place her in DCFS custody was not against the manifest weight of the evidence, where her father had only recently begun therapy to address his issues; only three overnight visits had occurred, beginning three weeks before the date of the dispositional hearing; and the juvenile court determined that the child needed additional time in transitioning to living with her father full-time.

¶ 2 Respondent Justin J. appeals from the juvenile court’s decision to make his daughter, two-year old Aaliyah J., a ward of the court and to appoint her a guardian, arguing that the juvenile court erred in finding him unable to care for Aaliyah. For the reasons that follow, we

affirm.

¶ 3

### BACKGROUND

¶ 4 On January 23, 2012, the State filed a petition for adjudication of wardship, asking the juvenile court to adjudicate Aaliyah a ward of the court. The petition claimed that Aaliyah was born on August 11, 2010, and was neglected, based on the failure of Shantille S., Aaliyah's mother,<sup>1</sup> to pick up Aaliyah from daycare on January 17, 2012. According to the petition, the daycare provider indicated that this was not the first time Shantille had failed to pick up Aaliyah, but that, in this case, Shantille's whereabouts were unknown from January 17 through January 19; Shantille also had a prior indicated report for inadequate supervision. The Department of Children and Family Services (DCFS) attempted to contact Shantille, but efforts were unsuccessful until January 20. At that point, Shantille admitted that she failed to pick up Aaliyah from daycare and that she did not have a plan to care for her; Shantille was homeless at the time. On January 19, Justin stated that he was unable to care for Aaliyah; the petition listed a college as Justin's address.

¶ 5 On the same day, the State filed a motion for temporary custody of Aaliyah, and the court entered an order granting temporary custody to the DCFS Guardianship Administrator; Justin received notice but was not present at the hearing on the motion. The court also entered an order granting Shantille supervised day visits, the frequency and duration of which were at the discretion of DCFS.

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<sup>1</sup> Shantille is not a party to the instant appeal. We relate facts concerning her only when relevant to Justin's appeal.

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¶ 6 On February 1, 2012, the juvenile court entered another temporary custody order and entered an order granting Justin supervised day visits, the frequency and duration of which were at the discretion of DCFS.

¶ 7 On June 6, 2012, Justin filed a motion for unsupervised day visits. The motion claimed that there were no allegations that Justin had any involvement in the facts that brought Aaliyah's case into the system, that Justin was a full-time college student, that he had been compliant with reunification services, that he had visited Aaliyah consistently at least three hours per week under supervision, and that those visits were consistent and appropriate and he had a good bond with Aaliyah. The motion further claimed that it would be in the best interest of Aaliyah to have unsupervised day visits with Justin and that Aaliyah's caseworker did not believe that Aaliyah would be at any risk of harm if unsupervised day visits were granted. On July 24, 2012, at the hearing on the motion, the parties indicated that the motion was uncontested and the juvenile court entered an order granting Justin unsupervised day visits with Aaliyah, the frequency and duration of which were to be at the discretion of DCFS.

¶ 8 On June 22, 2012, the court entered an order referring the case to mediation to resolve "visitation, communication/relationship and related issues." The parties agreed that Justin and Shantille would speak to Aaliyah on the phone at least once a week, and that Justin would schedule a visit with Aaliyah every other week.

¶ 9 On September 18, 2012, the parties came before the juvenile court for a hearing on the State's adjudication petition. The juvenile court entered an adjudication order, finding Aaliyah to be neglected in violation of section 2-3(1)(a) (lack of care) and 2-3(1)(b) (injurious environment)

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of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(a), (b) (West 2010)), as a result of neglect inflicted by a parent. The finding of neglect was based on a stipulation by the parties.

¶ 10 The stipulation stated that, if called to testify, Wanda Boyd-Gunn, a Division of Child Protection (DCP) investigator employed by DCFS, would testify that she was assigned to Aaliyah's family in that capacity on January 18, 2012. At the time the hotline call came in, Aaliyah resided with Shantille and Debra C.<sup>2</sup> and visited with Justin. As part of her investigation, Boyd-Gunn learned that Shantille had one prior indicated report for inadequate supervision in January 2011. Boyd-Gunn spoke with Justin on January 18, 2012, and Justin reported that he was willing to care for Aaliyah but was unable to do so because he was a full-time college student and lived on campus, where children were not permitted to live. Boyd-Gunn attempted to speak with Shantille three to four times between January 18 and January 19, 2012, but was unable to reach her; Boyd-Gunn spoke with Shantille on January 20. At that time, Shantille informed Boyd-Gunn that she did not pick up Aaliyah from daycare on January 17 because she was unaware Aaliyah was still at daycare. She returned home late that night and learned from Debra that Aaliyah was still at the daycare provider's home. At that point, Shantille did not pick Aaliyah up because she had no way to get there; she was unable to explain how she had traveled home that evening. Shantille told Boyd-Gunn that she had slept in the hallway of Debra's building on January 19 and had no place to stay and no plan for herself or Aaliyah.

¶ 11 Boyd-Gunn spoke with Justin again on January 23, asking him if he had any relatives

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<sup>2</sup> The record indicates that Debra is Shantille's aunt.

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who could help him care for Aaliyah. He stated that his parents were unable to care for Aaliyah but that he would ask his sister. On the same day, Boyd-Gunn spoke to Shantille again, who still had no place to stay.

¶ 12 The stipulation also stated that, if called to testify, Pearl Willis would testify that she was an in-home day care provider whose daycare facility closed at 5 p.m.; her license did not permit her to have children remain at the daycare overnight. Aaliyah attended the daycare and “always looked well cared for.” On two occasions prior to January 17, 2012, Shantille left Aaliyah at the daycare after hours; on both occasions, she failed to call and inform Willis when she would be picking up Aaliyah. On January 17, Shantille did not pick up Aaliyah before the daycare closed, so Willis called Debra, who was unable to pick up Aaliyah; Willis attempted to call Shantille several times, but was unable to reach her. No one came to pick up Aaliyah on the night of January 17, so Willis kept Aaliyah overnight. The next morning, Willis called Debra again, but she told Willis she would return the phone call later; Willis continued to try to reach Shantille with no success. Willis kept Aaliyah the first night because no one came to pick her up and Willis was unsure if something had happened with Shantille; however, she was unable to keep Aaliyah indefinitely with no plan.

¶ 13 During its argument, the State asked that Justin not be found to be a noncustodial parent, noting that while Aaliyah did not reside with Justin, Justin visited with Aaliyah and DCFS asked him several times if he was willing or able to take care of Aaliyah or had any relatives who could. While the State acknowledged that Justin was living on campus at the time and could not have Aaliyah stay with him, it noted that he was informed that his child had nowhere to stay and

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nevertheless was unable to create a care plan for her. The guardian *ad litem* agreed with the State's argument, arguing that "[a]s far as the idea that [the] father might have been noncustodial in this case, father was involved in Aaliyah's life; he was visiting, he knew about what she was doing, and he was even given the opportunity to come take Aaliyah or provide some sort of other care plan for her; he was not able to do so at the time."

¶ 14 Justin's attorney asked that Justin be found to be a noncustodial parent during the relevant times or, in the alternative, that he was not the perpetrator of the neglect because he was not contacted to pick Aaliyah up from daycare.

¶ 15 The juvenile court declined to find that Justin was noncustodial; it found Aaliyah neglected and that the neglect was inflicted by a parent. The court also addressed whether the parents' unsupervised day visitation with Aaliyah should be increased, and Shantee Jenkins, case manager at Children's Home and Aid, testified concerning the issue. In regard to Justin, Jenkins testified that Justin had been assessed for individual therapy, but had not yet begun the services because he was on a waiting list. Jenkins testified that there was no problem with Justin's visits being increased.

¶ 16 On the same day, the juvenile court entered a permanency order setting a permanency goal of return home within 12 months. The order stated that Justin and Shantille had participated in services "but have not made substantial progress."

¶ 17 On October 16, 2012, Justin filed a motion for unsupervised overnight visits. The motion claimed that Justin had been consistent and compliant with his referred services, that he had multiple supervised and unsupervised visits with Aaliyah on a weekly basis, that he was safe and

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appropriate with Aaliyah, that Aaliyah was bonded with Justin, and that unsupervised overnight visits would pose no risk of harm to Aaliyah and would be in her best interest. On November 28, 2012, at the hearing on the motion, the parties indicated that the motion was uncontested.

¶ 18 During the hearing, Elizabeth Valvo, Jenkins' supervisor, testified that Justin currently visited Aaliyah twice a week for unsupervised visits, and was attending individual therapy. Valvo further testified that Justin lived with his sister and her husband, and the home was "CERAP'd"<sup>3</sup> and found to be safe and appropriate. It was the agency's position that unsupervised overnight visits with Aaliyah was in her best interest. Valvo testified that Justin was a college student and was expected to graduate the following month. The juvenile court entered an order granting Justin unsupervised overnight visits, the frequency and duration of which were to be at the discretion of DCFS.

¶ 19 On December 12, 2012, Justin filed a motion to amend the temporary custody order to allow Aaliyah to return home with him. On December 18, 2012, the parties came before the juvenile court for a hearing on Justin's motion, as well as for a disposition hearing. The State entered several exhibits into evidence without objection, including a mental health assessment for Justin completed on October 26, 2012, and an undated letter from Roseland Community

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<sup>3</sup> The State's brief explains that "CERAP refers to the Child Endangerment Risk Assessment Protocol, which is used within the larger protocol of child protection practice to identify information consistent with threats to child safety; to analyze safety threats to determine how they are occurring within a particular family; and for safety planning to control identified safety threats."

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Good News Daycare in which Pearl Willis stated that Justin was not listed “on the paper work” at the time Aaliyah was left at the daycare but that, since that time, he had picked her up several times from daycare and had made arrangements to pay for Aaliyah’s daycare. The juvenile court also heard the testimony of three witnesses: Jenkins, Justin, and Justin’s brother-in-law.

¶ 20 Jenkins, the caseworker assigned to Aaliyah’s case, testified that Aaliyah was currently placed in a relative foster home; prior to DCFS involvement, Aaliyah was living in the same home, but Shantille was also living there. Jenkins last visited the home on November 16, 2012, and the home was safe and appropriate, with no signs of abuse, neglect, or corporal punishment. Aaliyah was two years old at the time of the hearing, and had completed a “zero to three evaluation,” which indicated that no services were required; there were no medical concerns and Aaliyah was up to date with immunizations.

¶ 21 Jenkins testified that the case came into the system when Aaliyah was left overnight at daycare and neither parent had a care plan for her. At the time the case came in, Justin did not take custody of Aaliyah because he reported that he was not given the option; Jenkins testified that information contradicted what she learned as the caseworker. Jenkins testified that the DCP investigator informed her that Justin was extended the option of having Aaliyah placed with him but indicated that he was in school full-time and could not take her at that point; Justin indicated that he would be willing to do so once he graduated. Jenkins testified that Justin had graduated from school the weekend before the disposition hearing and informed her that he would be beginning a job with a television show the first week of January.

¶ 22 Jenkins testified that Justin visited Aaliyah on the weekends, not during the week, due to

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his school schedule; he visited for four to five hours at a time. Justin was permitted to visit up to three times a week, but only visited once a week because of his schedule. Overnight visits began approximately three weeks before the disposition hearing, and had occurred three times, one night at a time. Justin resided with his sister and her husband and planned on living there until he was able to find other housing. Justin planned on continuing to keep Aaliyah in her current daycare once he began working. Jenkins testified that Justin was attending weekly individual therapy sessions and was addressing the issues that brought the case into the system, although it was still early in the process.

¶ 23 Jenkins testified that the case was staffed approximately a week before the date of the hearing and that the agency felt that Aaliyah should be returned to Justin, even though the agency was concerned about the amount of transition time for Aaliyah since Justin had only had three overnight visits with her at that point. They had spoken with Debra, Aaliyah's foster parent and maternal great-aunt, who expressed her concern that everything was happening too quickly and that Aaliyah did not have enough transition time; Aaliyah was closely bonded with Debra.

¶ 24 Jenkins further testified that she had spoken with Debra outside of court on the day of the hearing and Debra indicated that Aaliyah had recently been having nightmares and crying, which was a new behavior that began after the overnight visits. Jenkins spoke to an individual from DCFS' legal department, after which Jenkins spoke to Valvo. After restaffing the case with Valvo, the agency's recommendation was that Aaliyah become a ward of the court and that DCFS be appointed as guardian. Jenkins testified that this recommendation was in order "[t]o give Aaliyah more time to transition, to do some possible family sessions between the two

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parents, to discuss co-parenting and how that would happen once return home happens.” Jenkins testified that the agency was recommending having the overnight visits remain in place and increasing them for the parents as appropriate.

¶ 25 Jenkins testified that there was concern for Aaliyah’s emotional wellbeing if she was returned to Justin. “It would just be too much for her. There has been a lot of changes already with the overnights with the parents. She’ll be in a new environment constantly without seeing the -- possibly seeing the aunt that has been caring for her. It will just be too much for her at one time.”

¶ 26 Jeremy H., Justin’s brother-in-law, testified that Justin lived with him and Kristin, Jeremy’s wife and Justin’s sister. Aaliyah visited the home once a week. Jeremy testified that he informed Justin that he would be willing to help Justin support Aaliyah until Justin began working.

¶ 27 Justin testified that he was scheduled to begin working for a television show in January and that, depending on the commute, Aaliyah would remain in her current daycare facility. Justin further testified that the past two weeks, he had seen Aaliyah for limited visitation because of school finals. Prior to that, he visited her at least two to three times per week.

¶ 28 Justin testified that he was open to co-parenting with Shantille and that he moved off-campus so that he would be able to take Aaliyah to live with him; he used his refunded school housing deposit to purchase an automobile so that he could transport Aaliyah. Finally, Justin testified that Aaliyah did not have nightmares in his presence.

¶ 29 After the parties’ arguments, the juvenile court expressed its concern that,

“[b]ecause of her young age, I am concerned about going from a situation where she’s staying with the father essentially one night a week and then as pointed out by the parties, we’re going from one night to seven days a week, 24 hours a day and I, quite frankly, at disposition at this point in the case, I would have that concern whether or not there was an issue that was reported regarding perhaps there being these nightmares that the foster parent has reported. And I would have that concern honestly just because I don’t think there has been enough time for the child to anticipate this transition.”

The court noted that there was “no question” that the parents had “stepped up” and made progress in an attempt to provide for Aaliyah, which the court believed was “commendable.” However, the court was “concerned about whether it would be in the child’s best interest just to send her home today to the father without, essentially, a transition period where the child could get comfortable with the idea of going home to the father.” Accordingly, the juvenile court denied Justin’s motion to return Aaliyah home with him and found both parents unable for some reason other than financial circumstance alone to care for, protect, train, or discipline the child.

¶ 30 The juvenile court explained that “she’s very young, and I just think there is a need for some time for that situation to be presented to this very young girl so she can cope with it appropriately. So that is the reason for my decision.” The court found that it was in Aaliyah’s best interest to be adjudged a ward of the court. The court further found it to be in Aaliyah’s best

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interest to remove her from the custody of her parents, terminated the temporary custody order, and placed Aaliyah in the custody of D. Jean Ortega-Piron, a DCFS Guardianship Administrator with the right to place Aaliyah.

¶ 31 The juvenile court admonished the parents that they needed to comply with DCFS or risk termination of their parental rights, although, “[q]uite frankly, I don’t see that being an issue in this case given what has happened so far.” The court set the matter for a permanency hearing on January 10, 2013, and indicated that at that time, it was going to set a goal of return home in five months.

¶ 32 On December 21, 2012, Justin filed a notice of appeal.

¶ 33 ANALYSIS

¶ 34 The sole issue on appeal is whether the juvenile court erred in finding that Aaliyah should be adjudged a ward of the court due to her parents’ inability to care for, protect, train, or discipline her.

¶ 35 “The Juvenile Court Act is a statutory scheme, created by the legislature, the purpose of which is to secure for each minor subject thereto the care and guidance which will best serve the minor’s safety and moral, emotional, mental and physical welfare, and the best interests of the community.” *In re Austin W.*, 214 Ill. 2d 31, 44 (2005) (citing 705 ILCS 405/1-2 (West 2000)). Under the Act, once a minor has been found to be abused, neglected, or dependent, the juvenile court must schedule a dispositional hearing.<sup>4</sup> 705 ILCS 405/2-21(2) (West 2010). “At the

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<sup>4</sup> Although his brief argues that the daycare incident “should not have been held to reflect in any way on the father’s ability or competence,” on appeal, Justin does not challenge the

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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.” 705 ILCS 405/2-22(1) (West 2010). The court may place the minor under DCFS guardianship if the court determines that the child’s parents “are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are 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(1) (West 2010). “In all cases, it is the health, safety and interests of the minor which remains the guiding principle when issuing an order of disposition regarding the custody and guardianship of a minor ward. The best interests of the child is the paramount consideration to which no other takes precedence.” *Austin W.*, 214 Ill. 2d at 46.

¶ 36 A dispositional order is generally considered final for the purposes of appeal. *In re Faith B.*, 216 Ill. 2d 1, 3 (2005); *Austin W.*, 214 Ill. 2d at 44. A reviewing court will reverse the juvenile court’s determination “only if the factual findings are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order.” *In re Kamesha J.*, 364 Ill. App. 3d 785, 795 (2006); see also *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 56; *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009); *In re Gabriel E.*, 372 Ill. App. 3d 817, 828 (2007). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004) (citing *In re Edward*

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juvenile court’s finding that Aaliyah had been neglected.

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*T.*, 343 Ill. App. 3d 778, 794 (2003)). “Because a trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court’s findings merely because the reviewing court may have reached a different decision.” *In re April C.*, 326 Ill. App. 3d 245, 257 (2001) (citing *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998)).

¶ 37 In the case at bar, Justin argues that the juvenile court’s finding that he was unable<sup>5</sup> to care for Aaliyah and that it was in Aaliyah’s best interest to be made a ward of the court was against the manifest weight of the evidence. Justin claims that he “had established himself as a competent adult, and was willing and able to take custody and provide for his daughter.” We agree that the record demonstrates that Justin had been participating in individual therapy, graduated from college and obtained employment, moved to an apartment in which Aaliyah could live, and had purchased an automobile so that he could transport her. However, we also agree with the State and the Public Guardian that the record demonstrates that Justin also had only begun attending therapy a few months prior to the disposition hearing, through no fault of his own, and was still working on addressing the issues that had brought the case into the system. He also had only had three overnight visits with Aaliyah at the time of the hearing. Additionally, the co-parenting arrangement between Justin and Shantille was not yet clear and there were communication problems between Justin and Shantille. Consequently, we cannot find that the juvenile court’s finding that Justin was unable to care for Aaliyah at the time of the hearing was

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<sup>5</sup> Justin also makes an argument that he was not unfit, but we do not address this argument since the juvenile court did not make a finding of unfitness.

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against the manifest weight of the evidence.

¶ 38 Moreover, we cannot find that the juvenile court erred in determining that it was in Aaliyah's best interest to be made a ward of the court and placed in DCFS custody. There is no doubt that the juvenile court's decision was based on its conclusion that Aaliyah had not had sufficient time to transition to staying with Justin permanently. This finding was not against the manifest weight of the evidence. Aaliyah had lived with Debra for her entire life, first with both Debra and Shantille, and then with Debra alone and was strongly bonded with Debra. She had stayed overnight at Justin's home a total of three times, one night at a time, and the overnight visits only began three weeks before the disposition hearing. The court was "concerned about going from a situation where she's staying with the father essentially one night a week and then as pointed out by the parties, we're going from one night to seven days a week, 24 hours a day[.]" Consequently, we cannot find that the trial court's determination that Aaliyah's best interest required more time before placing her with Justin was against the manifest weight of the evidence. We emphasize that the record clearly indicates that Justin's custody of Aaliyah is simply being delayed so that Aaliyah has time to make the transition from Debra's home to Justin's. This is not a situation where Justin's parental rights are in danger of being terminated. Instead, the parties are simply being careful to ensure that Aaliyah is emotionally prepared to live with her father, which is anticipated to occur in the near future.

¶ 39

#### CONCLUSION

¶ 40 The juvenile court's decision to make Aaliyah a ward of the court and place her in DCFS custody was not against the manifest weight of the evidence, since Justin had only recently begun

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therapy to address his issues, only three overnight visits had occurred, and Aaliyah needed additional time in transitioning to living with Justin full-time.

¶ 41 Affirmed.