

2013 IL App (2d) 121272-U
No. 2-12-1272
Order filed March 25, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> DEMETRI H., a minor)	Appeal from the Circuit Court
)	of DeKalb County.
)	
)	No. 11-JA-34
)	
)	
(People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Kristen S.,)	Ronald G. Matekaitis,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent's contention that the evidence did not support the trial court's order finding the minor to be physically abused is erroneously based on a scrivener's error; the trial court did not abuse its discretion by failing to reserve the issue of unfitness due to respondent's incarceration; affirmed.

¶ 2 Following the adjudicatory hearing, the circuit court of DeKalb County found the minor, Demetri H., abused by respondent-mother, Kristen S., and neglected by father, John C. At the subsequent dispositional hearing, the trial court found respondent to be unfit and unable to care for the minor. However, the court found John to be fit, willing, and able to care for the minor, and it placed the minor in John's custody. The court made the minor a ward of the court and placed

guardianship of the minor with the Illinois Department of Children and Family Services (DCFS). Respondent appeals, contending that (1) the trial court's finding that the minor was an abused child was against the manifest weight of the evidence where there was no evidence presented that the minor was injured, and (2) the trial court abused its discretion in finding respondent unfit where the better option would have been to reserve the fitness issue due to her incarceration. We affirm.

¶ 3

BACKGROUND

¶ 4 The minor, who was born on February 13, 2011, is the biological child of respondent and John. The parties never married, but they lived together from December 2010 until June 2011. This case came to the attention of DCFS on June 15, 2011, when John called a hotline regarding respondent's attempt to injure the minor by placing a pillow over his face.

¶ 5 Deputy Dan Brauner testified that he responded to the call approximately 15 hours after the incident. He went to the apartment where the parties lived and spoke with John, who informed him of the following events. John and respondent were arguing around 1:30 a.m. on June 15, 2011, and during the argument, their baby was crying in the back bedroom. Respondent went to attend to the minor, and John heard that the minor had stopped crying. When John walked into the bedroom, he noticed respondent had a pillow over the minor's face. John saw the minor's arms flailing and heard the minor make gurgling sounds. John attempted to remove the pillow by forcefully pulling respondent's arms from the face of the minor. After he pulled off the pillow, the parties started arguing again. Respondent told John that, since he did not have any legal rights to the minor, he did not have a say if she were to kill the minor. Respondent then took a smaller pillow and attempted to place it over the minor's face. John was upset and pulled off the pillow for a second time. After

this, John and respondent argued again, at which point they both went to bed. John called the police while respondent was at work.

¶ 6 Detective Sergeant Brad Carls testified that John told him that he had decided to call the police after he was advised by his mother and sister. Carls further stated that, when he asked respondent for her side of the story, she admitted that she had argued with John, but when he asked if anything had happened with the minor, respondent either did not respond or said “nothing happened.” When Carls asked her if she had told John that she had placed a pillow over her son’s face a month earlier, respondent replied “yes,” and she started to cry.

¶ 7 John testified that the incident took place around 1:30 a.m. on June 15, 2011. He was in the living area of the apartment when the incident first started. He heard that the minor had suddenly stopped crying. When he walked into the baby’s room, he saw respondent holding a pillow on the minor’s face. John took off the pillow and asked respondent what she was doing. A few seconds later, respondent took a second pillow and placed it over the minor’s face. John told respondent to stop and he took the second pillow away.

¶ 8 John, Brauner, and Carls all testified that they observed no injury to the minor and that the minor did not experience any trouble breathing or exhibit any other out-of-the-ordinary problems following the incident. John testified that he felt responsible for what had occurred because he believed he had been emotionally and verbally abusive to respondent during the course of a prolonged argument that night and that his mistreatment of respondent had caused her to snap.

¶ 9 The police arrested respondent and charged her with one count of attempted murder and one count of aggravated domestic battery. Following respondent’s arrest and referral to DCFS, the State filed a petition for adjudication on October 17, 2011, alleging that the minor was abused by

respondent, in violation of section 2-3(2)(ii) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(2)(ii) (West 2010)), for creating a substantial risk of physical injury likely to cause death in that respondent held a pillow over the minor's face. The petition also alleged that John had neglected the minor, in violation of section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010)), "in that the minor's father witnessed the minor's mother place a pillow over the minor's face twice and he and mother then went to sleep. Father did not remove the minor from the mother's presence or call the police until after speaking with his mother and sister about the incident."

¶ 10 The trial court found the minor had been neglected by John and abused by respondent. In the adjudicatory order, the following two boxes were marked: "[that the minor] is in an environment that is injurious to the welfare of the minor as defined by 705 ILCS 405/2-3(1)(b);" and "[that the minor] is physically abused as defined by 705 ILCS 405/2-3(2)(i)." The order further states that the findings were based on the following: "Mother placed a pillow over four-month old minor's face, placing minor at substantial risk of harm. After this, father did not remove minor from mother's presence or call for help, placing the minor at risk of harm."

¶ 11 On December 23, 2011, DCFS began a family service plan for respondent and John, with a stated permanency goal for the family to remain intact. A report completed by DCFS on August 15, 2011, recommended that respondent obtain a mental health assessment and follow through with treatment recommendations, obtain a psychological evaluation, "and/or" a protective parenting assessment, and follow through with any treatment recommendations. The report recommended that John participate in parenting classes and in individual counseling to learn positive coping skills.

¶ 12 A court report issued by DCFS on June 11, 2012, indicated that the caseworker met with respondent in jail on July 28, 2011, and spoke with her by phone on June 5, 2012. During her

incarceration, respondent did not satisfactorily progress or maintain the recommended services. During the caseworker's conversation with respondent on June 5, respondent reported that the jail did not offer any services. The caseworker informed respondent that it was recommended that she complete a psychological evaluation and mental health assessment and that, if she is released, her contact with the minor would be supervised until she was engaged in the recommended services. The report further recommended that respondent follow through with the service recommendations outlined in the individual service plan, including mental health services, psychological evaluations, and parenting classes.

¶ 13 DCFS reported that John completed all recommended services. He presented a copy of a certificate of completion of his parenting classes, reported attending individual therapy, and that he was under the care of a psychiatrist.

¶ 14 On June 15, 2012, respondent was found not guilty of attempted murder but guilty of aggravated domestic battery (*People v. Kristen S.*, No. 2011 CF 417), from which she has appealed.¹ Respondent was sentenced to 180 days in jail, with credit for time served, 36 months probation, and mandatory counseling and medical treatment. Respondent acquired credit for time served and was released from jail on July 20, 2012.

¶ 15 Following a dispositional hearing, held on October 12, 2012, the trial court found that it was consistent with the health, welfare, and safety of the minor that he be made a ward of the court, that respondent was unfit and unable to care for, protect, train, educate, supervise, or discipline the minor. The order stated that the basis for determining unfitness was "mother was recently released from jail and has been convicted of aggravated domestic battery of which the minor was the victim. Mother

¹The appeal is now pending before this court.

has not completed services. And reasons stated on record by Judge.” The court found John to be fit, able, and willing to care for the minor, and it awarded John custody of the minor, with DCFS placed as guardian. Respondent was granted visitation with the minor subject to supervision by DCFS or its designee. Respondent timely appeals.

¶ 16

ANALYSIS

¶ 17

Adjudication of Abuse

¶ 18 Respondent first contends the trial court’s finding that the minor was physically abused, under section 2-3(2)(i) of the Act (705 ILCS 405/2-3(2)(i) (West 2010)), was against the manifest weight of the evidence. Respondent’s argument centers on the adjudicatory order in which the box finding the minor abused under section 2-3(2)(i) was checked. Section 2-3(2)(i) of the Act requires that “physical injury” be inflicted to the minor. Respondent asserts that the State did not prove that the minor suffered physical abuse, as required by section 2-3(2)(i), because there was no evidence of a visible injury to the minor.

¶ 19

The State argues that the wrong box was checked as a result of a scrivener’s error. We agree. A scrivener’s error is a clerical error “ ‘resulting from a minor mistake or inadvertence *** and not from judicial reasoning or determination.’ ” (Emphasis omitted.) *Schaffner v. 514 West Grant Place Condominium Ass’n, Inc.*, 324 Ill. App. 3d 1033, 1042 (2001) (quoting Black’s Law Dictionary 1349 (7th ed.1999)). We are able to determine that it was in fact a scrivener’s error because the box checked on the order is manifestly incongruous with the remainder of the record. The allegation set forth in the petition, the evidence presented at the adjudicatory hearing, and the factual basis for finding that the minor was abused are all based on the minor being placed at substantial risk of harm as set forth in section 2-3(2)(ii) of the Act. Section 2-3(2)(ii) does not require a physical injury; only

that a parent create “a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.” 705 ILCS 405/2-3(2)(ii) (West 2010). Nothing in the record is founded on evidence of physical abuse pursuant to section 2-3(2)(i), except the box checked on the order. Moreover, the scrivener’s error is no basis for reversal where the evidence supports a substantial risk of harm determination, and respondent does not argue otherwise.

¶ 20 Unfitness

¶ 21 On review, a trial court’s determination on a finding of unfitness will be reversed only if the findings of fact are against the manifest weight of the evidence, or the trial court committed an abuse of discretion by selecting an inappropriate disposition. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). A trial court abuses its discretion only when it acts arbitrarily without conscientious judgment or, in view of all the circumstances, exceeds the bounds of reason and ignores recognized principles of law so that substantial injustice results.. See *Connor v. Velinda C.*, 356 Ill. App. 3d 315, 324 (2005)). Respondent does not challenge whether the evidence supports the trial court’s finding that she is unfit, and thus we do not address that issue. Nevertheless, respondent complains that the finding of unfitness was an abuse of discretion where the better option would have been to reserve the fitness issue due to her incarceration.

¶ 22 Respondent maintains that the trial court should have reserved the issue of her fitness until such time as she had a reasonable opportunity to comply with and complete the DCFS service plan, and to otherwise reintegrate herself into the life of her minor child after having been separated from him for more than 18 months as a result of her imprisonment. Respondent points out that, during the juvenile proceedings, she remained in confinement and was unable to obtain the services required

by DCFS. Respondent further points out that the dispositional report filed in this matter was filed on June 11, 2012, before she was released from custody and before she had any reasonable opportunity to comply with the service plan. Despite the fact that respondent had no reasonable opportunity to comply with her service plan due to her confinement and that the DCFS dispositional report was filed prior to her release, respondent asserts that her recent release from confinement and her failure to complete services formed a basis of the court's order finding her unfit. As such, respondent contends that proceeding to a finding of unfitness constituted an abuse of discretion.

¶ 23 Respondent was incarcerated from June 15, 2011, until July 20, 2012, following the completion of her sentence for aggravated domestic battery. The dispositional hearing originally was set for August 10, 2012. However, on August 10, respondent filed a motion to continue the dispositional hearing and for other relief, in which respondent requested, in part, that the court establish visitation between respondent and the minor, require DCFS to submit its report at least seven days before the next scheduled hearing, and continue the matter. In the motion, respondent maintained, as she similarly asserts on appeal, that she would be placed at a disadvantage if a report was not prepared by DCFS that did not include its assessment of her because such an assessment "was of vital interest to [respondent], who wishes to establish her fitness, willingness and ability (as required under the Code) to parent her child." The trial court granted the request. The trial court granted a second request by respondent to continue, and set the dispositional hearing for October 12, 2012. By continuing the hearing, the trial court effectively did reserve the issue of unfitness, and thus afforded respondent time to comply with the service plan.

¶ 24 Moreover, the record shows that DCFS issued at least two other reports *after* respondent was released from confinement that were considered by the trial court in rendering its finding of

unfitness. An August 15, 2012, report recommends that respondent follow through with the service plan, including obtaining mental health services and psychological evaluations and attending parenting classes. During the dispositional hearing, the State specifically called the court's attention to another report filed by DCFS on September 5, 2012, although this report is not in the record.

¶ 25 Regardless, respondent does not point to anything in the record that was pending to show that she was actively engaged in services or that she was complying with the service recommendations from her release in July until the dispositional order in October. To the contrary, although clearly visitation had been established since respondent's release, the State's reference to the September 5 report demonstrates that respondent was not otherwise engaged in the recommended services. In fact, the record indicates that respondent continued to complain that she does not have any problems and does not need DCFS services. Accordingly, we find no abuse of discretion.

¶ 26 CONCLUSION

¶ 27 For the preceding reasons, the judgment of the circuit court of DeKalb County is affirmed.

¶ 28 Affirmed.