

NOTICE
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2013 IL App (4th) 130536-U

NO. 4-13-0536

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 21, 2013
Carla Bender
4th District Appellate
Court, IL

In re: M.P., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 13JA11
TAMARA COOKSON,)	
Respondent-Appellant.)	Honorable
)	John Madonia,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Steigmann and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding it was in the best interests of the minor to not award custody to respondent mother at the dispositional hearing was not against the manifest weight of the evidence.

¶ 2 In January 2013, the State filed a petition for adjudication of wardship of M.P. (born February 26, 2009), the minor child of respondent, Tamara Cookson, and Christopher Pitcock. In May 2013, the minor was found to be neglected by Cookson. In June 2013, custody of the minor was given to Pitcock.

¶ 3 Respondent appeals only the award of custody to Pitcock. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Respondent and Pitcock were married in 2008 after respondent became pregnant with M.P. They lived together in Indiana with M.P. until respondent left Pitcock in April 2011

and took M.P. with her. The couple divorced in 2012. Respondent was given custody of M.P. with visitation for Pitcock. Respondent lived in Bloomington, Indiana, with her new boyfriend, while Pitcock lived in Indianapolis by himself. Numerous requests for well-being checks were made of the local police by Pitcock, alleging M.P. was being neglected or abused while living with respondent. The reports were found to be unfounded each time, but respondent lost the trailer home she was buying due to the number of police contacts. Respondent moved into a motel with M.P. and her boyfriend and then into the home of her boyfriend's mother while he remained at the motel. Respondent left the mother's home after numerous police visits for well-being checks.

¶ 6 In addition to reports made to the police, Pitcock reported to Indiana's Department of Child Services (DCS) M.P. was neglected and/or abused in respondent's custody. DCS initiated an investigation into the allegations. An investigation was opened in regard to respondent and her boyfriend. They failed to show up for a court hearing related to that investigation.

¶ 7 When respondent had nowhere to live but a motel again, her father, who lived in Springfield, Illinois, asked respondent and M.P. to come live with him. Respondent moved to Springfield with her boyfriend and M.P. without telling Pitcock where she went.

¶ 8 The Illinois Department of Children and Family Services (DCFS) was informed respondent might be living with her father and M.P.'s environment might be injurious to her welfare. DCFS investigated and found M.P.'s living conditions were not appropriate. She was living with respondent's boyfriend, who had sexually abused a minor, and also with respondent's father (M.P.'s grandfather) who also had sexual abuse allegations due to his abuse of a minor. On January 16, 2013, M.P. was taken into protective custody and placed in a DCFS foster home.

¶ 9 On January 16, 2013, the State filed a petition alleging respondent was the mother of M.P. and the minor was neglected due to her environment being injurious to her welfare (1) by respondent's violation of a safety plan put in place by DCFS and (2) because her siblings had been adjudicated neglected and respondent failed to make reasonable progress toward having them returned to her care and they remained in the care of DCS in Indiana.

¶ 10 On January 17, 2013, the State filed a supplemental petition. This petition alleged M.P. was an abused minor because she was at substantial risk of physical injury due to physical abuse of her sibling by respondent. This same date a shelter care order was entered. The trial court found there was probable cause to believe M.P. was neglected and abused. M.P. was released from DCFS custody and guardianship placed with Pitcock.

¶ 11 On February 19, 2013, the guardian ad litem (GAL) for M.P. filed a motion to reconsider the portion of the order awarding custody to Pitcock. On March 13, 2013, a hearing was held and the motion was taken under advisement. Respondent was awarded visits with M.P. The visits were to be supervised and to last four hours each.

¶ 12 On May 8, 2013, an adjudicatory hearing was held. The State was allowed to amend its original petition by rewording the second reason for finding M.P. to be neglected to "the minor's environment is injurious to her welfare as evidenced by the minor's sibling being adjudicated neglected and the mother's failure to make reasonable progress towards having the children returned to her care and the mother having surrendered the children for adoption." That same day respondent stipulated M.P.'s environment is injurious to her welfare due to (1) her siblings being adjudicated neglected and respondent's failure to make reasonable progress toward

having the children returned to her care and (2) respondent surrendering the children for adoption. The trial court entered an order of adjudication finding M.P. to be neglected pursuant to the stipulation. M.P. was placed in the custody of Pitcock and visitation was ordered for respondent.

¶ 13 On June 11, 2013, the trial court held a dispositional hearing. DCFS filed a dispositional report indicating its reason for involvement in the case. DCFS was informed there was an active warrant in Indiana for respondent's boyfriend for purchasing a large quantity of pseudoephedrine and both respondent and her boyfriend have a history of methamphetamine use. Further, respondent was indicated in 2001 for the death of a child by neglect and her boyfriend was indicated for sexual abuse of a minor relative in 2012.

¶ 14 DCFS had provided a service plan for respondent, which included parenting classes, mental health assessment, counseling sessions with a therapist, obtaining and maintaining legal employment, and maintaining housing. At the time of the hearing, respondent had successfully completed a parenting class and was seeing a mental health therapist biweekly. She had mental health diagnoses of depressive disorder recurrent and post-traumatic stress disorder. Respondent chose not to take psychotropic medications and thought she was doing fine with the help of a therapist. She was unemployed but actively seeking employment. She resided in an apartment paid for by family members.

¶ 15 The report indicated Indiana DCS visited Pitcock's home on June 3, 2013, to check on the well-being of M.P. after M.P. stated to respondent Pitcock smacked her in the mouth. The investigator reported M.P. had a dime-size bruise on her left lower leg and a bump on her head after a fall on the porch of Pitcock's house. She did not have a black eye. Pitcock

had a suitable home for M.P. and plenty of healthy foods.

¶ 16 Pitcock had been responsible for driving M.P. to Springfield to visit respondent on the designated dates and times. Respondent testified she saw Pitcock's mother driving when they brought M.P. for the visits. The visits had been supervised and went well.

¶ 17 Katerra Bond of DCFS testified custody and guardianship should stay with Pitcock. She based her opinion on the report prepared by Indiana DCS finding Pitcock and his home were safe and appropriate. Respondent came into the DCFS system because the home she provided M.P. was not appropriate because others living in the home had been sexually inappropriate in the past. In addition, respondent had given up custody of two other children after pleading guilty in the death of another child. Respondent received a 20-year sentence in the death of that child.

¶ 18 Under cross-examination, Bond admitted respondent completed parenting classes and now lived alone in her own apartment. While incarcerated, respondent received counseling as well as medications for mental health issues. Her involvement in the death of her child had been the result of depression. Respondent was receiving mental health counseling now and her therapist recommended mental health medications. Respondent refused to take the medications, having stated she could control her mental health through regular counseling sessions. Respondent had been screened for substance abuse and found to have no such issues.

¶ 19 Bond noted the home study prepared by Indiana DCS included a criminal background check on Pitcock. Pitcock had been arrested for driving under the influence of alcohol and public intoxication. He was also arrested for driving on a suspended license. Bond was unsure if he had a driver's license on the date of the hearing. Pitcock's support system

consisted of his mother. No evidence showed Pitcock had any current problems with alcohol.

¶ 20 Respondent testified she was released from prison in 2007. She became involved with Pitcock shortly after her release. M.P. was born in 2009, and shortly after respondent was diagnosed with postpartum depression. She was also diagnosed with post-traumatic stress disorder and sever depression. She was prescribed medication at that time. She has stopped taking the medication and relies solely on therapy sessions rather than become dependent on a drug. Respondent admitted she had been battling mental health issues for 16 years but believed she was making progress.

¶ 21 Respondent stated when she was living with her boyfriend's mother, she was told the boyfriend had an active warrant for possessing or purchasing large quantities of pseudoephedrine. She stated while she lived with him, she did not have any knowledge of the warrant. However, the boyfriend moved with her to Springfield, Illinois, to live with her father. Respondent stated she became aware of sexual abuse allegations against the boyfriend in 2012. He left her home in January 2013, after DCFS raised concerns about the allegations.

¶ 22 The GAL made no recommendations as to custody, stating neither parent was a good choice for M.P.

¶ 23 On June 11, 2013, the trial court entered its dispositional order. The court found the minor should be released to her father, Pitcock. The court noted it was placing custody and guardianship with Pitcock but this order was subject to further proceedings in the postdivorce proceedings in Indiana. The court denied the GAL's motion to reconsider and closed the case. Respondent appeals.

¶ 24

II. ANALYSIS

¶ 25 Respondent appeals the court order awarding M.P.'s custody to Pitcock. She does not challenge the trial court's adjudication of neglect. Once a finding of neglect has been made, the trial court must determine the " 'proper disposition best serving the health, safety and interests of the minor and the public.' " *In re Austin W.*, 214 Ill. 2d 31, 43, 823 N.E.2d 572, 580 (2005) (quoting section 2-22(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-22(1) (West 2000)). "In all guardianship and custody cases, 'the issue that singly must be decided is the best interest of the child.' " *Austin W.*, 214 Ill. 2d at 49, 823 N.E.2d at 583 (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879, 571 N.E.2d 905, 923 (1991)).

¶ 26 A trial court's best-interest determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Austin W.*, 214 Ill. 2d at 52, 823 N.E.2d at 585. A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *In re Arthur H., Jr.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 27 Respondent argued in the trial court DCFS was put in the middle of a postdivorce custody dispute where it had no business being. This would be true if, when DCFS looked into M.P.'s welfare while she lived with respondent, it found no problems with the placement. However, it found problems. Respondent had been living with M.P. in a home with alleged child sex offenders (her father and boyfriend). In addition, her boyfriend had an outstanding warrant for purchasing large quantities of pseudoephedrine, a known ingredient in the methamphetamine manufacture. Respondent admitted having mental health issues for which she had been prescribed medication, but she also admitted she was not taking the medication. The same mental health issues caused respondent to plead guilty to the death of a previous child. After that, she had given two other children up for adoption.

¶ 28 As the GAL noted, neither parent was an ideal choice to have custody of M.P. They both had flaws. However, M.P. had been living for the last six months with Pitcock and things were going well in this placement. DCS in Indiana found Pitcock's home to be satisfactory. A finding placing M.P. in the custody and guardianship of Pitcock was not against the manifest weight of the evidence. The issue was not final, as there were pending matters in the postdivorce proceedings in Indiana which could result in different findings as far as M.P.'s custody in the future.

¶ 29 III. CONCLUSION

¶ 30 The trial court's judgment that custody and guardianship of M.P. should be placed with her father is not against the manifest weight of the evidence. We affirm.

¶ 31 Affirmed.