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2014 IL App (3d) 140212-U

Order filed November 24, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> D.W., K.W., and D.W.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-14-0212
Petitioner-Appellee,	)	3-14-0213
	)	3-14-0214
v.	)	Circuit Nos. 13-JA-262
	)	13-JA-263
D.W.,	)	13-JA-264
	)	
Respondent-Appellant).	)	Honorable David J. Dubicki,
	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's determination that respondent is dispositionally unfit was not against the manifest weight of the evidence. Respondent was unable to provide suitable housing or care for the children.

¶ 2 The State filed three juvenile neglect petitions alleging that the mother, M.S., neglected her minor children, Desmi.W., K.W., and Desmo.W.; the court consolidated the cases. The court conducted an adjudicatory and dispositional hearing pertaining to the mother. The court

adjudicated the minors neglected with regard to the mother and found the mother to be dispositionally unfit. Following an adjudicatory hearing in Peoria County circuit court on the State's petition, the trial court adjudicated the minors neglected with regard to respondent father. The court then conducted a dispositional hearing pertaining to respondent; the trial court found respondent to be unfit and unable to care for the children.

¶ 3 Respondent appeals, arguing that the court's finding of unfitness was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Respondent, D.W., is the biological father of three juveniles, Desmi.W., K.W., and Desmo.W. The State filed three juvenile petitions alleging that the mother, M.S., neglected the minors; the court consolidated the cases. At the time of the petition, the minors resided with M.S. The petition contained the following allegations:

- "A) The mother had two unfounded DCFS cases in the summer of 2013 however the mother requested an open intact case due to her anger/mental health issues and on October 9, 2013, the caseworker went to the home at 11:00 a.m. and found the mother sleeping, two of the minors running the home, and the youngest minor's diaper was soaked through, and the mother reported she drank most of a bottle of tequila that late night/early morning: and
- B) The mother has a substance abuse problem with alcohol; and

- C) The mother has mental health problems including bi-polar and anger management and the mother is not on medication and the mother reported that she feels like she is losing her mind and has a lot of outbursts; and
- D) The mother reported that she was seeing her ex-paramour, [J.J.], and they had previously had a domestically violent relationship where at least 15 to 16 physical fights had occurred and, with the last time 1 month prior, the minors watched and one had screamed 'Don't hit my mommy,' and on or about October 4, 2013, Mr. [J.] hit the mother with a bottle and the mother punched Mr. [J.] in the face and then keyed Mr. [J.'s] car and Mr. [J.] came to the home again on October 9, 2013 but was not allowed in, and when asked by DCFS to get an order of protection, the mother refused; and
- E) The mother also reported on October 10, 2013, that she was going to move back in with the minors' father, [D.W.], and that Mr. [W.] is a felon; and
- F) [J.J.] has a criminal history which includes: '02 delivery of a controlled substance (delinq), '05 resisting police, '06 possession of cannabis, '07 minor in possession of liquor in public."

¶ 6 Of the six allegations, only allegation "E" concerned respondent. The State removed the minors from the mother's residence. The Department of Children and Family Services (DCFS) attempted to contact respondent in order for him to take custody of the minors; DCFS attempts were unsuccessful. The State placed the children in shelter care.

¶ 7 The court adjudicated the minors neglected with regard to the mother. Following a dispositional hearing, the court found that M.S. was unfit; the court ordered her to complete several tasks.

¶ 8 Following an adjudicatory hearing, the court adjudicated the minors neglected with regard to respondent. The court then conducted a dispositional hearing. Respondent was not present at the hearing. Respondent's counsel explained that respondent reported that he did not think he would be able to attend the hearing. Respondent told his counsel that he did not have a problem with the proceeding going forward without him; respondent stipulated to the allegations contained in the petition. Counsel did not object to the court's finding that respondent defaulted for failing to file a formal written answer; the court allowed respondent's counsel to participate in the hearing and argue on respondent's behalf. At the hearing, the court considered the following: testimony from Sarah Shelley, a child welfare specialist employed by Lutheran Social Services; a dispositional hearing court report, which Shelley prepared after interviewing respondent; and respondent's counsel's argument.

¶ 9 The report stated that respondent married M.S. in 2009; they had three children during the marriage. In April of 2013, M.S. and respondent divorced due to respondent's infidelity. Respondent and M.S. had a history of domestic violence. After the divorce, M.S. had custody of the minors, at least in part, due to respondent's inability to provide suitable housing. M.S. had discretion over respondent's visitation with the minors. The report outlined additional visitation

difficulties precipitated by respondent's desire to reconcile with M.S. Additionally, respondent did not provide financial support for the minors. Shelley sent paperwork to DCFS to force respondent to pay child support.

¶ 10 Respondent last saw the minors during a two hour supervised visit on December 13, 2013. Prior to the supervised visit, respondent had last seen the children during the summer of 2013. Shelley testified that she attempted to set up a three hour visitation with respondent and the minor children for January 24, 2014. Prior to the visit, Shelley mailed respondent a letter confirming the scheduled visitation. Respondent did not attend. Subsequently, Shelley left several messages for respondent and sent him a letter. Respondent ultimately told Shelley he could not visit the children due to his work schedule. Shelley offered respondent visitation every other week to accommodate his work schedule. However, respondent said he was fine talking with the children over the telephone.

¶ 11 When Shelley filed the report, respondent was 25 years old. At the time of the report, respondent resided with I.W. at a hotel in Urbana, Illinois. He told Shelley that he would leave I.W. if M.S. reconciled with him. I.W. had criminal convictions for larceny and obstructing justice. The State removed I.W.'s children from her care and placed the minors in the care of relatives. Respondent told Shelley he believed DCFS got involved when I.W. left her children unsupervised. Shelley told respondent that I.W. could negatively affect his case as I.W. was not cooperating with DCFS.

¶ 12 Prior to residing at the hotel, respondent resided at a men's shelter. Respondent said he was employed at Plastic Pack in Champaign, Illinois, where he operated machines to make plastic bottles. He worked 36 to 40 hours per week. The caseworker requested documents to verify his employment. Respondent failed to provide any verification. Furthermore, respondent

admitted that he had a conviction in 2005 for possession of cannabis; respondent served one year in the county jail followed by two years of probation. Respondent started experimenting with alcohol and marijuana when he was 16 years old. He smoked marijuana daily, except while on probation. Respondent last smoked marijuana in February 2013.

¶ 13 The report indicated that respondent placed the blame for the children's involvement with DCFS on M.S. The caseworker stated that respondent was at fault for not being aware of what was happening in the children's lives. The report stated that the court should find respondent unfit due to his history of unstable relationships and inability to provide a stable placement for the minors.

¶ 14 The court found respondent to be unfit. The order stated that respondent: lacked stable housing; had an immature attitude; put his needs above the minors' needs; was in a relationship with and lived with a woman who was unfit; had a history of domestic violence; and used drugs instead of supporting the minors. The court also ordered respondent to: execute all authorizations for release of information requested by DCFS; cooperate fully with DCFS; participate and successfully complete counseling; participate and successfully complete a parenting course or parenting classes; participate and successfully complete a domestic violence course; provide to the assigned caseworker any change in address and/or phone number, and any change in the members of his household within three days; provide the name, date of birth, social security number, and relationship of any individual requested by DCFS; and attend supervised visitation with the minors at the time and place set by DCFS.

¶ 15 Respondent appeals.

¶ 16 ANALYSIS

¶ 17 Respondent argues that the trial court's ruling that he is dispositionally unfit was against the manifest weight of the evidence. Respondent admits that the court properly found that he was unable or unwilling to provide suitable housing for the minors. He further admits that as a result, placement of the minors with DCFS was necessary.

¶ 18 Parental rights are ordinarily superior to the State's interest; the Juvenile Court Act of 1987 (the Act) requires that the court make a fitness determination of both parents as a prerequisite to removing the child from parental control and placing the child with someone other than a parent. 705 ILCS 405/2-27(1) (West 2006); *In re M.K.*, 271 Ill. App. 3d 820, 828 (1995). The Act authorizes the court to "place the minor in the custody of a suitable relative or other person as legal custodian or guardian" only when both parents are determined to be unfit, unable, or unwilling to act in a parental capacity. 705 ILCS 405/2-27(1)(a) (West 2006).

¶ 19 Respondent points out that the State's petition alleged only that he was a felon. However, he did not object to evidence below. On appeal, he makes no argument and cites no authority to support his proposition that evidence at the fitness hearing is limited by allegations in the petition. We find the issue is forfeited. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 126-27 (2003) (citing *Hoff v. Mayer, Brown & Platt*, 331 Ill. App. 3d 732, 741 (2002)) (failure to cite authority results in forfeiture of the issue on appeal). Moreover, a court may determine that a parent is unfit even if the juvenile petition contained no allegations against him. *In re A.P.*, 2013 IL App (3d) 120672, ¶ 16. We are left to decide whether the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 20 The State must prove that respondent is dispositionally unfit by a preponderance of the evidence. *Id.* ¶ 15; (citing *In re April C.*, 326 Ill. App. 3d 245, 257 (2001)). We will reverse the trial court's fitness findings if such findings are against the manifest weight of the evidence. *In*

*re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). A reviewing court will find that the trial court's determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). We give deference to the trial court's determination; the trial court is in the best position to observe the witnesses. *Id.* at 498-99. The trial court also has a higher degree of familiarity with the evidence. *Id.* at 499.

¶ 21 The evidence overwhelmingly supports the court's determination that respondent is unfit. Respondent concedes that he does not have stable housing; he currently resides in a one-bedroom, one-bath hotel room, which is not suitable for children. Respondent argues that the trial court should have found him unwilling or unable based on his living situation. We disagree. We find that unwilling, unable, or unfit are not mutually exclusive categories. Section 2-23(1)(a) of the Act grants the trial court the power to determine dispositional fitness of parents. 705 ILCS 405/2-23(1)(a) (West 2006). We also find that the court did not err in considering the fact that defendant did not have suitable housing to support its unfitness finding. The fact that respondent concedes he does not have suitable housing does not prevent the trial court from considering other bases of unfitness.

¶ 22 A court may find a parent unfit for failing to maintain interest, concern, or responsibility for the minor; the court does not need to find all three. *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 41. Respondent did not actively parent the children, as evident by the long lapse in time between his visits with the minors. Respondent last saw the minors on December 13, 2013, despite the fact that Shelley attempted to schedule additional visitations between respondent and the minors. Respondent failed to attend a second scheduled visitation on January 24, 2014. Respondent stated that he did not have time to visit

the children due to his work schedule. Shelley offered to accommodate the visitations around his work schedule; respondent said he was fine talking to the minors on the telephone. Not only did respondent not actively parent the minors, but he also failed to financially support them. Shelley sent paperwork to DCFS to force respondent to pay child support. The evidence supports a finding that respondent failed to maintain responsibility for the minor children.

¶ 23 In addition, respondent stated that he and M.S. have a history of domestic violence. The report indicated that respondent's desire to reconcile with M.S. led to visitation difficulties. Also, respondent told Shelley that he was employed, but respondent failed to provide verification documents.

¶ 24 The evidence overwhelmingly supports the trial court's determination that respondent is dispositionally unfit. This appeal is frivolous and without the slightest scintilla of merit.

¶ 25 **CONCLUSION**

¶ 26 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 27 Affirmed.