

NOTICE

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2014 IL App (4th) 130785-U

NO. 4-13-0785

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 29, 2014

Carla Bender

4th District Appellate

Court, IL

In re: S.H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA21
STATEMAN HOFF,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's adjudicatory order, finding the respondent's child neglected, is not against the manifest weight of the evidence.

(2) The trial court did not err in making the respondent's child a ward of the court and placing custody and guardianship with the Department of Children and Family Services.

¶ 2 Respondent father, Stateman Hoff, appeals the orders finding his daughter, S.H. (born April 13, 2013), neglected, making S.H. a ward of the court, and placing custody and guardianship with the Department of Children and Family Services (DCFS). Hoff argues the orders are against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 16, 2013, when S.H. was three days old, the State filed a petition for

adjudication of neglect on behalf of S.H. The State alleged two counts of neglect, contending S.H.'s environment was injurious to her welfare when she resided with: (1) her mother, Symone Simmons, who is not a party to this appeal, because Simmons failed to correct the conditions that resulted in a prior adjudication of parental unfitness regarding S.H.'s half-siblings; and (2) Hoff because she was exposed to substance abuse (705 ILCS 405/2-3(1)(b) (West 2012)).

¶ 5 In June and August 2013, the trial court held an adjudicatory hearing on the State's petition. Eight witnesses testified.

¶ 6 Barbara Traylor, a child protection advanced specialist with DCFS, testified DCFS received an action-needed report after Simmons delivered S.H. On April 14, 2013, Traylor went to the hospital and spoke with Simmons. Hoff was present. Traylor told Simmons about the report. Simmons stated she did not know why DCFS was called because she had been doing all she needed to do. Traylor continued to question Simmons about her progress. Simmons stated she had been doing well with her new caseworker, but then, within two weeks of having the new caseworker, this "lady" took her children. Simmons further reported to Traylor the worker made false accusations against her, stating multiple men had been in her yard with her children and the children identified them as uncles.

¶ 7 Traylor testified while at the hospital, she completed substance-abuse and domestic-violence screens with Simmons. Simmons denied using drugs or alcohol. Simmons reported no domestic violence within two years and denied any domestic violence with Hoff.

¶ 8 Traylor testified Simmons stated she and Hoff began dating about a year earlier, but they were no longer in an intimate relationship. Hoff stayed with Simmons because she was pregnant. Simmons allowed Hoff to stay in her life because he gave her money, about \$300 or

\$400 a month, to help with the children. Hoff told Traylor that Simmons tried to get him to call the caseworker and meet with her before the baby was born. Hoff did not do so because he did not feel he needed to until the baby was born. Traylor asked Hoff about criminal activity. Hoff had been arrested for driving under the influence (DUI). Hoff reported other incidents that occurred before he was 18. Hoff also reported he had an upcoming hearing. Hoff stated everything had been tied together and he only had to answer for a deceptive-practice charge. While Traylor was at the hospital, two officers and a security guard approached Hoff. Hoff was arrested.

¶ 9 According to Traylor, when she learned of the DUI charge she also learned Hoff was driving Simmons' car at the time. Simmons told Traylor she did not know about the DUI. Simmons reported she only knew she received a call from the police telling her she could pick up her car from impound. Simmons stated after she learned about Hoff's criminal activity and his unwillingness to work with DCFS, she did not want to be in any relationship with Hoff. Simmons believed such a relationship could jeopardize her children.

¶ 10 According to Traylor, she did not take protective custody of S.H. immediately because she had not reviewed the records. Upon doing so, Traylor returned to the hospital and took protective custody of S.H.

¶ 11 On cross-examination, Traylor testified the case involving Simmons' four other children remained open. The records showed those four had been returned to Simmons but later removed. Simmons then had supervised visits.

¶ 12 Traylor testified she did not believe Simmons was truthful about her relationship with Hoff. After custody of S.H. had been taken, Simmons reported incidents where Hoff was

at her home but then denied he had ever been around her children. Simmons's untruthfulness about her relationship with Hoff was not a factor in the decision to remove S.H. from her custody. The main deciding factor was the other children had been returned to her but then removed again, placing S.H. at risk of harm.

¶ 13 Traylor testified Simmons had done what she was asked to do regarding parenting and substance-abuse goals, but she had also allowed others, who had not been approved, to be around her children unsupervised. Traylor stated Hoff was not authorized because he had not met with a caseworker, services had not been put in place for him, and Hoff was continuing to commit crimes during that time period.

¶ 14 Mike Talbott, a Champaign police officer, testified on April 27, 2012, he received a report about a check presented on a closed account. The suspect for that offense was Ashton Smith-Littleton. Smith-Littleton is the father of two of S.H.'s half-siblings. On March 19, 2013, Officer Talbott spoke with Simmons regarding the check. Simmons initially denied knowing about it. Eventually, Simmons admitted having the check from Smith-Littleton's account and using it to pay for carpet cleaning services but denied knowing the account was closed.

¶ 15 On cross-examination, Officer Talbott testified he only spoke with Simmons once. Initially, Simmons was hesitant, but she became cooperative. Simmons was willing to repay Stanley Steamer.

¶ 16 Andrew J. Charles, an Urbana police sergeant, testified on January 18, 2013, he was dispatched regarding a fleeing subject at University Avenue and Interstate 74. When Sergeant Charles arrived at the scene three vehicles were there. One was abandoned. Hoff was found a short distance away from the scene.

¶ 17 Ezzard C. Hoskins, Jr., a University of Illinois police officer, testified on November 2, 2012, he saw Hoff and recognized him as having an outstanding arrest warrant. Hoff appeared nervous, but he complied with Officer Hoskins' request for identification. Hoff was arrested. During the search of his pockets, the officers found 0.7 grams of marijuana, 1.6 grams of cocaine, and approximately \$700.

¶ 18 Cortez Gardner, an Urbana police officer, testified in January 2013, he received a report about a possible incident of deceptive practices. A fraudulent check had been presented to pay for cleaning services in November 2012. Officer Gardner located Hoff when he was brought to the police station on another case. Officer Gardner questioned Hoff, who denied knowing about the victim's business or the check, which had Hoff's name as the payor. Hoff stated he closed his account in 2011 and he believed his mother stole his checkbook. Hoff did not report the stolen checkbook to the police. Officer Gardner arrested Hoff.

¶ 19 Amanda Groves, a caseworker at the Center for Youth and Family Solutions, testified she began working on the case involving Simmons for approximately two weeks in February 2013. Simmons was pregnant and named Hoff as the father. At that time, Simmons' children had extended, overnight, unsupervised visits with Simmons.

¶ 20 According to Groves, she and the previous caseworker met with Simmons and her children at her home. Simmons reported she and Hoff were not having a relationship at that time. Case notes, however, contained reports of Hoff spending time around Simmons' children.

¶ 21 Groves testified during her first week as caseworker, she asked her supervisor if she could do an unannounced visit. When Groves drove to Simmons' residence she saw the two older children in the front yard with four or five adults she did not recognize. Groves did not see

Simmons. The adults were males and females. At that time, Groves did not attempt to identify the adults. Groves made contact with Simmons, who was inside the house with her two younger children. Groves asked if everything was okay. Simmons did not mention the people in the yard. Simmons stated everything was okay and they talked about the next visit. Groves, at that time, did not ask about the people in the yard.

¶ 22 Groves testified she then went to a coworker's residence to look at Facebook accounts, including Hoff's, to ascertain the identities of the individuals in Simmons' front yard. Groves identified one of the males as Hoff. The following day, Groves and her supervisor returned to Simmons' residence. Hoff was also present. Simmons stated she and Hoff were not in a relationship.

¶ 23 On cross-examination, Groves testified the children reported to her that Hoff was in Simmons' residence. The children also stated many aunts and uncles had been to the house. They called Hoff an uncle. Groves agreed the date of the unannounced visit was February 7, 2013. That day, Groves asked the two older children who the people in the yard were. They told her they were aunts and uncles.

¶ 24 According to Groves, at the time of the unannounced visit, the children returned to Simmons' after school and stayed there. The extended, unsupervised, overnight visitation did not end because of this one event, but it was a factor in the decision.

¶ 25 Groves testified she called the police on February 8, 2013, and reported she had seen Hoff at the residence. She spoke to Officer Cerro of the Urbana police department. He told her he arrested Hoff at that residence a week earlier. Groves did not ask Officer Cerro the offense for which Hoff was arrested.

¶ 26 Jessica Lofu, formerly a child welfare supervisor with Lutheran Social Services of Illinois (LSSI), managed Simmons' case from February 20, 2013, to May 24, 2013. The case was transferred to LSSI from the Center for Youth and Family Solutions. During that time, the status of the case was supervised.

¶ 27 Lofu testified when she received the case, she again referred Simmons to a parenting group, a domestic-violence group, and individual counseling. Lofu made the referrals because the children had been removed from her care and Simmons needed to work toward having them returned. Simmons was attending the recommended services, but she had not yet completed them.

¶ 28 On cross-examination, Lofu testified before the February 2013 removal of the children, Simmons completed some of the services. She completed the 18-week domestic-violence class at Cognition Works. She completed a parenting class. After the new referrals, Simmons had completed the domestic-violence service and the parenting class. Lofu also requested Simmons complete a couple of drug screens. They were negative.

¶ 29 According to Lofu, in the three months she worked on the case, she performed three unannounced visits to Simmons' house. Lofu noticed no signs of any other adults living in the residence. Regarding her relationship with Hoff, Simmons stated they were friends. Simmons indicated they had limited contact. Hoff shoveled snow once for Simmons. Hoff's family helped pay a telephone bill. Both Simmons and Hoff denied being in a relationship, and Lofu did not notice either of the others' belongings at each others' homes.

¶ 30 Lofu testified Simmons attended counseling. Simmons cooperated fully during her case and expressed a genuine desire to do everything necessary for the return of her children.

Lofu believed Simmons' conduct reflected that desire. She based this conclusion on her observation of the parent-child visits and her participation in groups.

¶ 31 The State asked the trial court to take notice of Hoff's DUI and deceptive-practices convictions, as well as the orders from the juvenile case involving S.H.'s half-siblings.

¶ 32 The guardian *ad litem* (GAL) called Preston James, an Urbana police officer, to testify. Officer James testified he was working on January 18, 2013, and he responded to a call involving Hoff that day. When he arrived at the scene, Officer James observed Hoff in the backseat of a county deputy's vehicle. Officer James asked Hoff if he had been smoking marijuana in his vehicle. Hoff denied he had, but stated he smoked "marijuana a couple days before."

¶ 33 On cross-examination, Officer James testified he learned Hoff had been driving his girlfriend's vehicle and fled the scene. The address Hoff provided for his "girlfriend" matched Simmons'. Officer James testified while he did not notice an odor of cannabis on Hoff, the vehicle smelled of marijuana. Officer James issued Hoff citations for DUI, marijuana, and driving with no valid driver's license.

¶ 34 Simmons, testifying on her own behalf, testified she was 21 years old. Her oldest child was seven years old and S.H. was four months old. In 2011, Simmons' children were removed from her care. Simmons completed all services she was asked to complete, including an 18-week domestic-violence class through Cognition Works, a 6-week parenting class through Crisis Nursery, a 12-week domestic-violence class through LSSI, and a 12-week parenting class through LSSI. Simmons also attended counseling. She recently had been referred to a new counselor. There were no services Simmons did not complete.

¶ 35 Simmons testified she had been employed as an assistant district manager at the News-Gazette for approximately four months. She also recently started a second job as a shift manager at a grocery store. Simmons lived at her current residence over one year.

¶ 36 Simmons testified she and Hoff were friends. They had regular contact regarding S.H. Hoff and his family helped her financially if she got behind in paying her bills. When she was pregnant with S.H., she was a high-risk patient and could not work. Hoff's family helped her financially during that time. Simmons and Hoff visited S.H. together once a week for two hours. Hoff visited her at the hospital when S.H. was born. He had been to her residence twice. Hoff helped her move into her residence, and he once shoveled snow for her.

¶ 37 According to Simmons, no one told her Hoff was not allowed at her residence. During her involvement with DCFS, Simmons had six or more caseworkers. Simmons testified Groves did not perform an unannounced visit at her home. Hoff would not have been at her home and her children would not have been outside after dark in February.

¶ 38 Simmons testified her two youngest children had been returned to her for extended, unsupervised, overnight visits in November 2012. The two older children were returned with the same status the day Groves was introduced to Simmons as the new caseworker.

¶ 39 Hoff testified on his behalf. According to Hoff, he was no longer using illegal drugs. Hoff was serving two terms of probation. As part of his probation, he participated in drug screens. All screens tested negative. Hoff and Simmons were friends. Hoff and his family helped Simmons financially during her pregnancy.

¶ 40 Hoff testified he wanted to be a good father and he had family support to help him raise S.H. Hoff resided at his grandfather's home with his mother and an aunt. Hoff had a part-

time job with FedEx, with the option to work overtime. Hoff helped financially at his grandfather's home.

¶ 41 The trial court found S.H. neglected. In its written order, the court found the State's witnesses credible.

¶ 42 In September 2013, the dispositional hearing was held. No one testified at the hearing. The trial court considered a report prepared by Kelsey Sauder, a child welfare specialist with LSSI. It stated the following:

¶ 43 Simmons' older children were brought into DCFS's care in April 2011, after a report Simmons was abused by her paramour, Smith-Littleton. Simmons acknowledged the abuse occurred and engaged in services. The case regarding these children had previously been opened in August 2010, following a report Simmons' children were exposed to domestic violence and drug dealing.

¶ 44 A service plan had not been completed since October 2012 and an administrative case review (ACR) had not occurred after the children were brought back into DCFS care. This violated DCFS policy. LSSI was working to correct the error and stated a completed service plan would be filed within a week. The ACR for all of Simmons' children was scheduled for October 2013.

¶ 45 Simmons experienced a rough childhood, including domestic violence and significant substance abuse in her mother's home. At age 13, Simmons moved in with 19-year-old Antowan Reed, the father of two of her children. Simmons took some classes through the University of Phoenix, majoring in psychology. She enrolled at Parkland Community College for fall 2013. Simmons received a scholarship of approximately \$9,000. Simmons resided in a

three-bedroom home with two of her younger siblings. She received housing assistance for her rent. LSSI inspected Simmons' home in June 2013 and found no evidence of another adult residing there. At that time, Simmons' 11-year-old sister resided with her.

¶ 46 When Simmons was 16, she moved to Ohio to go to school. Reed provided care for their two children. When she was 17, Simmons returned. In May 2009, Simmons lived at the Round House, after she left Reed. Simmons reported she could no longer stay with Reed because he stabbed her in the legs. In 2009, Simmons assumed full-time parenting responsibility of her two children with Reed.

¶ 47 In 2009, Simmons met Ashton Smith-Littleton, the father of two of Simmons' children. On August 10, 2010, Simmons learned Smith-Littleton and his brother Paris Smith were selling cocaine from her apartment. She told the two to leave. They refused and beat her. The children were present. Simmons called the police. Simmons, at this time, did not want to leave Smith-Littleton. Simmons lied to the caseworker about her relationship with Smith-Littleton, calling him her cousin.

¶ 48 On April 25, 2011, Simmons called the police and reported Smith-Littleton was choking, hitting, and punching her. Three children were present. Smith-Littleton was arrested for domestic battery and assault.

¶ 49 Simmons had visits three times a week with S.H. beginning in April 2013. Simmons missed eight visits in this time, four of which were due to lack of a ride or a failure to show. Because of the missed visits, the visits were decreased to twice each week. Simmons' interaction with S.H. was appropriate and affectionate. Simmons was "fully capable of providing care to her infant daughter."

¶ 50 Hoff was a single, 19-year-old male. He was the father of one child, S.H. Hoff resided in a four-bedroom house with his grandfather, who was a professor at the University of Illinois, an aunt, and his mother. His mother had a psychology degree from Eastern Illinois University and worked with Blue Cross Blue Shield. From March 2005 through June 2006, Hoff resided in foster care due to his mother's illness and her inability to care for her children. Hoff's mother experienced depression after his grandmother's death. Hoff's mother's mental illness was successfully being treated at the time of DCFS's involvement with S.H. Hoff graduated high school in 2012. He studied auto mechanics for one semester at Parkland Community College. Hoff believed his relatives would help him care for S.H. Beginning in July 2013, Hoff worked for FedEx.

¶ 51 According to the report, Hoff "was very obliging throughout the interview." He appeared to function at average levels. Hoff reported he tried marijuana his sophomore year. At the time of his January 2013 DUI arrest, he was using marijuana three times a week. Hoff served approximately one month of house arrest for the DUI and for the deceptive-practices charge and was on probation.

¶ 52 Sauder reported Hoff completed a drug and alcohol evaluation through Prevention and Treatment Services. It was recommended he complete 10 hours of DUI Risk Education, which he completed successfully. LSSI planned to refer Hoff to Prairie Center for a comprehensive substance-abuse assessment and random drug screens. Individual counseling for Hoff was scheduled to begin in the approaching weeks. He had also recently been referred to a parenting class. Regarding visits, he had two hours of supervised visits with S.H. each week. He cancelled four visits for court and one due to house arrest. Hoff demonstrated appropriate

interactions and caregiving skills during the visits.

¶ 53 Sauder opined Hoff was not a viable option for placement due to his criminal activity. She believed as Hoff learns how his decisions impact his daughter, he could "step into a caregiving role." Sauder recommended DCFS be granted custody and guardianship of S.H.

¶ 54 By written order, the trial court found it in the best interest of S.H. she be made a ward of the court and adjudged neglected. The court granted custody and guardianship of S.H. to DCFS. The court found Hoff "unfit and unable for reasons other than financial circumstances alone to care for, protect, train or discipline [S.H.] and the health, safety and best interest of [S.H.] will be jeopardized if [she] remains in the custody of [Hoff]." The court stressed Hoff was serving 18 months' probation for aggravated DUI and another offense.

¶ 55 This appeal followed.

¶ 56 II. ANALYSIS

¶ 57 A. Neglect Adjudication

¶ 58 Because an action for the adjudication of wardship is a significant intrusion into the sanctity of the family, it should not be lightly undertaken. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The General Assembly devised a two-step process to determine whether a child should be made a ward of the court. *Id.* The first step is the adjudicatory hearing, at which the trial court will consider whether the child is abused, neglected, or dependent. *Id.* ¶ 19. The State bears the burden of proving abuse, neglect, or dependency by a preponderance of the evidence, which is proof making the condition more probable than not. *In re N.B.*, 191 Ill. 2d 338, 343, 730 N.E.2d 1086, 1088 (2000).

¶ 59 In this case, S.H. has been found neglected as a minor whose environment is

injurious to her welfare when she resides with (1) Simmons in that Simmons failed to correct the conditions that led to a previous adjudication of parental unfitness regarding S.H.'s half-siblings; and (2) Hoff in that she would be exposed to substance abuse (705 ILCS 405/2-3(1)(b) (West 2012)). A finding of neglect will not be disturbed unless it is against the manifest weight of the evidence, meaning the opposite conclusion is clearly evident. *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 60 On appeal, Hoff argues the trial court's finding of neglect is against the manifest weight of the evidence. Hoff emphasizes Simmons made efforts to correct the conditions that led to the earlier adjudication and points to Lofu's testimony showing the progress made by Simmons in the period of February 20, 2013, through May 24, 2013, when Lofu left LSSI. Hoff further emphasizes Simmons reported to Lofu she was not in a romantic relationship with Hoff, and Lofu's three unannounced visits to Simmons' home did not reveal evidence to the contrary. Hoff further contends the evidence does not show he had contact with Simmons' other children or that he ever exposed any child to substance abuse.

¶ 61 The trial court's finding is not against the manifest weight of the evidence. The court expressly found the testimony by the State's witnesses credible. This credibility finding is not contradicted by the record. Testimony establishes Simmons was not allowed to expose her children to unauthorized individuals, but she did so. Testimony establishes Simmons' children were unsupervised in her yard with adults, including Hoff, an unauthorized individual. Simmons' children identified Hoff as an "uncle." Simmons denied Hoff was seen in her yard with her children, but the trial court did not believe her. Simmons had a child with Hoff. Hoff then committed a DUI involving marijuana while driving her vehicle. Simmons had not

corrected the conditions that led to her older children's removal and that would potentially harm S.H. We find no error in the finding of neglect.

¶ 62 B. Dispositional Order

¶ 63 Once a child has been found neglected, abused, or dependent, the second step in an adjudication of wardship is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)). At this hearing, a trial court decides whether a child may be committed to DCFS custody and guardianship. The court may grant custody and guardianship to DCFS if it finds (1) the parents are "unfit or *** 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 [(2)] 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 2012). Biological parents have a superior right to custody, generally meaning both parents must be found unfit, unable, or unwilling before a court may place a minor with DCFS. *In re Ta. A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1037 (2008). We will not reverse a trial court's decision unless the findings of fact are against the manifest weight of the evidence or the court abused its discretion in selecting an improper dispositional order. *Id.*, 891 N.E.2d at 1037-38.

¶ 64 Hoff argues the trial court's finding he was unfit is against the manifest weight of the evidence. Hoff contends because LSSI failed to update a service plan since October 2012, the intent of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) is to keep the family intact, his family was willing to assist in raising S.H., and there is no evidence he used illegal drugs since January 2013, S.H.'s custody and guardianship should not have been removed from him.

¶ 65 The trial court's decision granting custody and guardianship to DCFS is not against the manifest weight of the evidence. The evidence shows Simmons asked Hoff to contact DCFS before S.H. was born. He did not do so. The evidence shows Hoff committed a deceptive-practice offense and had a DUI conviction within months of S.H.'s arrival. Hoff, age 19, admitted previous and weekly marijuana use and fled the police. The court did not believe his and Simmons' testimony that he was not exposed to Simmons' other children. While the record shows progress on Hoff's part—that, should it continue, may allow S.H.'s return to his custody and guardianship in the future, it is not yet enough. We find no error.

¶ 66 We note Hoff's argument LSSI failed to update a service plan in violation of its own policy. This failure, however, is not sufficient to overcome the finding of unfitness under the facts of this case.

¶ 67 III. CONCLUSION

¶ 68 We affirm the trial court's judgment.

¶ 69 Affirmed.