

NOTICE

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2014 IL App (4th) 140127-U

NO. 4-14-0127

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 6, 2014
Carla Bender
4th District Appellate
Court, IL

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| In re: M.F., E.F., and D.F., a/k/a K.E., Minors, |) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| Petitioner-Appellee, |) | Champaign County |
| v. |) | No. 13JA56 |
| ALEXANDER FAVORS, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | Richard P. Klaus, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in placing custody and guardianship of the respondent children with the Department of Children and Family Services.

¶ 2 Respondent father, Alexander Favors, appeals the order finding him unable to care for, protect, train, or discipline his children, E.F. (born March 29, 2009) and M.F. (born February 1, 2008), finding his children's best interests would be jeopardized if they were in his custody, and placing custody and guardianship with the Department of Children and Family Services (DCFS). Respondent appeals, arguing the order is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2013, the State filed an amended petition for adjudication of neglect

on behalf of E.F., M.F., and their half-sibling K.E. (born May 19, 2013). K.E. shared a mother, Tiffany Favors, with E.F. and M.F., but K.E.'s father is Roderick Elston. Neither Tiffany nor Elston is a party to this appeal. At the time the petition was filed, E.F. and M.F. resided with Tiffany, Elston, and K.E. in Urbana. Respondent and his wife, Kashima Favors, resided in New York. In the petition, the State alleged three counts of neglect, contending the children were neglected in that their environment was injurious to their welfare when they resided with Tiffany or Elston in that they were exposed to (1) domestic violence, (2) substance abuse, and (3) risk of physical injury (705 ILCS 405/2-3(1)(b) (West 2012)).

¶ 5 In January 2014, the trial court entered an adjudicatory order finding the children neglected. Tiffany and Elston stipulated to count I, admitting the children were exposed to domestic violence.

¶ 6 In February 2014, a dispositional hearing was held. The trial court considered a report authored by Lutheran Social Services of Illinois (LSSI). According to the report, the children entered DCFS care after an incident of domestic violence during which Tiffany and Elston were "punching, hitting, and biting each other." At the time of the incident, Elston was holding K.E.

¶ 7 LSSI reported respondent was born in 1980. He had a good relationship with both parents, who did not marry each other. There was no known family history of DCFS involvement, criminal activity, substance abuse, mental illness, or developmental disabilities. In 2000, respondent graduated from Waukegan High School. He was involved in sports and did not require special-education services. Respondent had a good relationship with his peers and teachers. Respondent attended a junior college on a track-and-field and choir scholarship. After

one year of college, respondent left school and became a licensed barber. He joined the Army in 2007 and remained enlisted. Respondent and Kashima had been married two years and resided in a two-bedroom home in New York. They received no financial support or assistance. The couple reported no issues regarding the safety of their neighborhood. Respondent reported he and Kashima had the same life goals, including continuing their education and having children after completing college. Respondent would be deployed to Korea on February 17, 2014, for eight months.

¶ 8 According to the dispositional report, Tiffany and respondent married in 2006, and remained married "four or five years." Tiffany reported "a history of anger, emotional abuse, blame, shame, and slander." Tiffany stated to LSSI she was the primary caretaker of the children and her marriage ended because respondent "drove her crazy." Respondent reported the marriage was good despite their differences. Respondent stated Tiffany had been unfaithful, but the two attempted to save their marriage. Respondent reported both decided to end their marriage. Tiffany, with respondent's consent, returned to Illinois with the children. Respondent paid child support but maintained infrequent contact with the children. Respondent reported seeing the children every four to six months, when he visited Illinois. Before this case opened, respondent last visited M.F. and E.F. in July 2013 for one or two weeks.

¶ 9 Regarding visits, LSSI reported respondent participated in visits with E.F. and M.F. In an agency supervised visit on December 18, 2013, the worker reported the visit went well. Respondent "redirected behaviors appropriately and comforted his daughter when she cried at the end of the visit." Respondent had four hours of third-party supervised visits per week and four hours of unsupervised visits per week. Respondent also had telephone visitation

with his children. The visits were reported to have gone well. Respondent was attentive and no concerns were noted. The children were happy and excited to see respondent and Kashima. All three children were placed in a relative foster home with their maternal grandmother.

¶ 10 During closing argument, respondent's counsel argued the trial court should grant him custody over his children. Counsel stated respondent was willing to speak to his supervisor about a change of deployment orders if necessary. Counsel further argued the following: "If the Court is considering not granting him custody, we do ask the Court to consider a finding of unable and we ask the Court to consider his unusual circumstances."

¶ 11 The trial court held it was in the best interest of the children and the public they be made wards of the court an adjudged neglected. The court determined respondent was neither unfit nor unwilling, but found respondent unable to act as a custodial parent. The court observed the children were "essentially re-acclimating themselves to him as he has not been a custodial parent for some time." In its written order, the court further emphasized respondent would be deployed for eight months beginning February 17, 2014.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 After a child is adjudicated neglected, the next step in adjudication of wardship proceedings is the dispositional hearing. *In re A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)). At the dispositional hearing, a trial court determines whether a child may be committed to DCFS custody and guardianship and 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). Because biological parents have a superior right to custody, both parents must be found unfit, unable, or unwilling before the children may be placed with DCFS. *In re Ta. A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1037 (2008). This court will not reverse a trial court's decision unless the factual findings are against the manifest weight of the evidence or the court abused its discretion in choosing an improper dispositional order. *Id.*, 891 N.E.2d at 1037-38.

¶ 15 Respondent argues the trial court erred in finding him unable to care for, protect, train or discipline his children. Respondent, citing *In re Ryan B.*, 367 Ill. App. 3d 517, 855 N.E.2d 272 (2006), contends the court's view was "paternalistic" because the court assumed custody "just has to be more [than respondent] can handle right now." Respondent focuses on the positive factors in his life, including his marriage, steady employment, lack of criminal history and DCFS involvement, visits with his children, and the child-support payments.

¶ 16 The State contends the dispositional order is proper. The State emphasizes the children were young, only visited with respondent a few times a year, and had not resided with respondent for a long time. The State further points to the fact respondent would be deployed for eight months just 10 days after the hearing. Moreover, the State contends respondent conceded the "unable" finding at the dispositional hearing and therefore forfeited a challenge to it.

¶ 17 The trial court did not abuse its discretion in denying respondent's request for custody. Respondent resided in New York. His children resided in Illinois. For two to three years, the children, ages 3 1/2 and 5 at the dispositional hearing, had not resided with their father. For eight more months, they would not have been able to reside with their father. The finding is

not that respondent lacks the ability to provide for his children, it is that he cannot "care for, protect, train or discipline" his children from Korea. That respondent would ask his supervisor for a change of orders does not change this finding. Respondent knew the hearing was approaching and could have made such an attempt before the hearing, and no evidence showed such request would be granted within 10 days.

¶ 18 The trial court had little information about Kashima and no evidence about her ability to care for the two preschoolers while respondent was in Korea. At this point, the court was concerned with stability. Respondent had only modest contact with the children over the last three years. There was no finding as to his future ability to care for the children, and future permanency hearings will help determine what occurs next.

¶ 19 *Ryan B.* is distinguishable. *Ryan B.* involves a finding a noncustodial biological father was "unwilling," not "unable," to care for his children and does not include the fact he would be thousands of miles away from his children should custody be granted. See *Id.*, at 520-21, 855 N.E.2d at 275-76.

¶ 20 Based on this record, respondent appears to be a fit parent and a candidate for custody. His impending deployment to Korea weighed heavily in finding he is unable to care for the children. Military parents should not be foreclosed from custody. We conclude placement with the father should be immediately explored upon his return, and we trust permanency hearings will be conducted with that goal in mind.

¶ 21 Having determined the trial court's decision is not an abuse of discretion, we need not consider the State's argument respondent consented to the "unable" finding.

¶ 22 III. CONCLUSION

¶ 23 We affirm the trial court's judgment.

¶ 24 Affirmed.