

NOTICE

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2014 IL App (4th) 140424-U

NO. 4-14-0424

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 19, 2014
Carla Bender
4th District Appellate
Court, IL

In re: La. B., Do. D., Li. B., and Ju. B., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 14JA11
DONNIE DUCKWORTH,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court did not err in (1) finding respondent unfit and (2) placing custody and guardianship of the minors with the Department of Children and Family Services.

¶ 2 In February 2014, the State filed a petition for adjudication of neglect with respect to La. B., Do. D., Li. B., and Ju. B. Respondent, Donnie Duckworth, is the legal father of Do. D. and the putative father of Li. B. and Ju. B. In May 2014, the trial court found respondent unfit and placed custody and guardianship of the minors with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court (1) erred in finding him unfit and (2) abused its discretion in granting custody and guardianship of the minors to DCFS. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2014, the State filed a petition for adjudication of neglect and shelter

care with respect to La. B., born in May 2008; Do. D., born in February 2012; Li. B., born in March 2013; and Ju. B., born in March 2013. The petition named Tamela Baskin as the minors' mother and respondent as the legal father of Do. D. and the putative father of Li. B. and Ju. B. The petition also named Nicholas Clark as the putative father of Li. B. and Ju. B. The petition alleged the minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)) in that their environment was injurious to their welfare when they resided with Baskin because of their exposure to inadequate supervision, substance abuse, and risk of physical harm. The trial court entered a temporary custody order, finding probable cause to believe the minors were neglected and placing temporary custody of the minors with DCFS. The court also ordered visitation with respondent fathers suspended until further order of the court.

¶ 6 In March 2014, the trial court entered an order granting respondent supervised visitation of Do. D., Li. B., and Ju. B. In April 2014, the court conducted an adjudicatory hearing. Respondent waived his right to the hearing, and Baskin stipulated to the allegation of inadequate supervision. The court found the minors were neglected based on an injurious environment.

¶ 7 In May 2014, the trial court conducted the dispositional hearing. The dispositional report indicated respondent, born in 1983, lived with his father in Danville. Respondent received a monthly disability check of \$710. Respondent indicated he was unsure why he received the check but thought it might be for "bad behavior." He had been arrested for domestic battery, issuance of a warrant, residential burglary, and aggravated battery. He had one conviction for assault and battery. Respondent indicated he first used alcohol at age 16 and then used it every day. He first tried marijuana at age 14 and his last use was over 30 days prior.

¶ 8 The dispositional report indicated respondent loved being a parent to his children and enjoyed feeding them. He participated in weekly visits with Li. B., Do. D., and Ju. B. Respondent often brought snacks and appeared very comfortable with them.

¶ 9 The report indicated Do. D. was two years old and lived with his maternal aunt. Educationally and developmentally, he was behind in several areas. Li. B. and Ju. B. lived with their maternal grandmother along with their older sister, La. B., and their medical needs were being met.

¶ 10 At the hearing, the State supplemented the dispositional report with an addendum showing respondent had completed a partner abuse intervention program. Respondent did not testify. In its recommendation, the State noted respondent had been "very cooperative" in regard to services but had not done anything "in a meaningful way which would make him a fit, able and willing custodian." The State asked that custody and guardianship be removed from all respondent parents and awarded to DCFS. The State also asked that respondent's visitation be supervised by DCFS. In his recommendation, respondent's counsel stated, in part, as follows:

"Because the State has not presented any evidence to the contrary we'd ask the Court to find Mr. Duckworth is fit, willing and able to care for his children and grant him custody and guardianship. We understand the court-ordered [deoxyribonucleic acid] testing is not scheduled to take place until later this month and while Mr. Duckworth believes that the twins are his children we understand the Court may not yet be comfortable with granting Mr. Duckworth custody and guardianship of them without knowing for certain that they are in fact his children so we ask that

there be a further dispositional hearing scheduled as to Mr. Duckworth and the twins after we know the results of these tests.

Should the Court not grant custody and guardianship today then we'd ask the Court consider granting custody to Mr. Duckworth of at least [Do. D.] even without guardianship. Nothing in the report indicates that Mr. Duckworth will not be a safe caretaker for his children particularly under the continued guardianship of [DCFS] and we believe it would be in [Do. D.'s] best interest to live with his father who he clearly knows and is adequately able to meet his needs during visits. If nothing else, then we ask that [DCFS] be granted full discretion for visitation so the children can move forward appropriately with reunification as quickly as the social workers deem appropriate."

¶ 11 The trial court found it in the best interests of the minors that they be adjudged neglected and made wards of the court. The court found Baskin and respondent unfit, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minors. The written order noted respondent had not had a long-term custodial relationship with the children and he allowed them to live with Baskin, "a neglectful parent who left the children unattended." The court placed custody and guardianship of the minors with DCFS. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. Unfitness Finding

¶ 14 Respondent argues the trial court's finding of unfitness was against the manifest

weight of the evidence. We disagree.

¶ 15 In deciding whether a minor should become a ward of the court, the trial court engages in a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. First, an adjudicatory hearing on the State's petition for adjudication of wardship is considered to determine whether the minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336 (citing 705 ILCS 405/2-18(1) (West 2010)). If the court finds the minor abused, neglected, or dependent, then the matter moves to step two, which is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)).

¶ 16 At the dispositional hearing, the 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 are 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)] that 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).

¶ 17 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). However, in proceedings under the Juvenile Court Act, the primary interest is the best interests of the child and "a child's best interest is superior to all other factors, including the interests of the biological parents." *In re J.J.*, 327 Ill. App. 3d 70, 77, 761 N.E.2d 1249, 1255 (2001). Moreover, "[i]f the 'best interests' standard can be attained only by placing the child in the custody of someone other than the natural parent, it is unnecessary for the court to find the natural parent unfit to care for the child." *J.J.*, 327 Ill. App. 3d at 77, 761 N.E.2d at 1255 (quoting *In re J.K.F.*, 174 Ill. App. 3d

732, 734, 529 N.E.2d 92, 93 (1988)).

¶ 18 "The standard of proof in a trial court's section 2-27 finding of unfitness that does not result in a complete termination of all parental rights is a preponderance of the evidence." *In re April C.*, 326 Ill. App. 3d 245, 257, 760 N.E.2d 101, 110 (2001). On appeal, this court will not reverse a trial court's decision unless its factual findings are against the manifest weight of the evidence or the court abused its discretion in choosing an improper dispositional order. *Ta. A.*, 384 Ill. App. 3d at 307, 891 N.E.2d at 1037-38. We note this court "may affirm the trial court's decision on any basis established by the record." *In re K.B.*, 314 Ill. App. 3d 739, 751, 732 N.E.2d 1198, 1208 (2000).

¶ 19 Respondent claims his status as a noncustodial parent does not render him unfit to care for his children. Further, respondent argues the trial court's finding that he allowed the children to live with a neglectful parent was unwarranted by the evidence. The record indicates respondent lived with his father. While he received \$710 per month in disability, respondent was unsure of why he received it but thought it might have been for "bad behavior." Respondent stated he used marijuana, with his last use being over a month prior to the dispositional report. He also had a criminal history involving domestic violence.

¶ 20 Here, it was not even clear whether respondent was the father of Li. B. and Ju. B. at the time of the hearing. Moreover, the evidence indicated he was unfit. With respondent's admitted marijuana use, it was clear he was unfit to care for, protect, train, or discipline the minors at that time. Even if it could be said the evidence of respondent's unfitness was lacking because he did not know about Baskin's neglect, it was still in the best interests of the minors to be placed with someone other than respondent at that point in time. Accordingly, we find the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 21

B. DCFS Guardianship

¶ 22 Respondent argues the trial court abused its discretion in granting guardianship to DCFS with the right to place the children. We disagree.

¶ 23 Section 2-22(1) of the Juvenile Court Act provides, in part, as follows:

"At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2012).

Section 2-23 of the Juvenile Court Act provides for various kinds of dispositional orders, including, *inter alia*, placement with a parent (if that parent's acts or omissions were not the basis of the neglect finding) or with DCFS for care and services. 705 ILCS 405/2-23, 2-27 (West 2012).

¶ 24 "The court's decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). "[A]n abuse of discretion occurs only where no reasonable person would take the view adopted by the court." *In re Marriage of DeRossett*, 173 Ill. 2d 416, 422, 671 N.E.2d 654, 657 (1996).

¶ 25 In the case *sub judice*, the trial court placed custody and guardianship of the minors with DCFS. The evidence indicated the minors had been placed with relative caregivers who were attending to their needs. We find the court's dispositional order was not an abuse of

discretion.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the trial court's judgment.

¶ 28

Affirmed.