

NOTICE

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2014 IL App (4th) 140647-U

NO. 4-14-0647

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 10, 2014
Carla Bender
4th District Appellate
Court, IL

In re: T.Y.-B., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 14JA7
ERIC BRYANT,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding in its dispositional order that the respondent father was unfit to care for his minor child was not against the manifest weight of the evidence.

¶ 2 Respondent, Eric Bryant, appeals the trial court's finding in its dispositional order that he was unfit and unable to care for his minor child, T.Y.-B. (born March 14, 2003). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Torri Young are the parents of T.Y.-B. The record reflects Torri is also the parent of four other minors (T.Y.-B.'s younger siblings), who were involved in the underlying proceedings but who are not subjects of this appeal. (In his brief, respondent notes he and Torri historically behaved as though one of the other minor children, T.Y. (born December

11, 2004), was also respondent's child; however, respondent acknowledges a parent-child relationship had not been established between him and T.Y. at the time of the underlying proceedings. Additionally, the trial court's dispositional order reflects its findings as to respondent referred only to T.Y.-B.)

¶ 5 On March 3, 2014, the State filed a second amended petition for adjudication of neglect, alleging T.Y.-B. and her four younger siblings were neglected and it was in their best interests to be adjudicated wards of the court. (The petition named respondent as T.Y.-B.'s father and listed T.Y.'s father as unknown.) Specifically, the State alleged the children's environment was injurious to their welfare when they resided with Torri and Christopher Payne, the legal or putative father of Torri's three youngest children, because (1) the minors were exposed to domestic violence (count I), (2) the minors were exposed to a risk of physical harm (count II), and (3) Torri and Christopher failed to protect the minors from domestic violence (count III). Ultimately, Torri admitted and stipulated to count I of the State's second amended petition, and respondent waived his right to an adjudicatory hearing. On June 5, 2014, the trial court entered its adjudicatory order, finding all five minors neglected.

¶ 6 On June 23 and 24, 2014, the Center for Youth and Family Solutions (CYFS) filed a home and background report and addendum. The report identified respondent as the father of T.Y.-B. and T.Y. Torri reported having been in a relationship with respondent from June 2000 to sometime in 2005. She described their relationship as "good" aside from one domestic violence dispute. Torri stated T.Y.-B. and T.Y. saw respondent "quite often."

¶ 7 The report further showed respondent lived in a two-bedroom house with his girlfriend of 12 years, whom the report identified only as Rachel, and two of his children. He re-

ported working as a barber for most of his life but stated he recently obtained full-time employment at the Veterans Affairs (VA) Hospital in Danville, earning \$17.18 per hour. The report stated respondent had "been in at least four significant relationships and ha[d] seven women that [were] his children's biological mother." Respondent denied any problem with alcohol or drugs or that he experienced any serious consequences from alcohol or drug use. He further denied ever receiving any treatment, but he acknowledged he "had to get involved with Prairie Center as a stipulation of parole." With respect to respondent's legal history, the report stated as follows:

"[Respondent] reports going to jail for back Child Support and being charged two times for Possession of Marijuana. [Respondent] states for the first possession conviction he was required to do [30] months' probation. The second time he was charged with possession he was sentenced to five and a half months of Boot Camp and is still currently on parole, but stated he will be off parole next month. A [Child Abuse and Neglect Tracking System] and [Law Enforcement Agencies Data System] check completed on June 23, 2014[,] revealed [respondent] has been arrested [13] times. [Respondent] has been arrested for possession of cocaine and marijuana, violating probation, violating an order of protection, home invasion, domestic battery, mob action, criminal sexual assault, and resisting arrest. [Respondent's] criminal history dates back to 1997."

Additionally, according to the report, respondent visited with his children when he could. How-

ever, he lacked transportation and had difficulty visiting his children "because he live[d] in Danville and they live[d] in Rantoul."

¶ 8 At the conclusion of the report, CYFS recommended that guardianship of all five children be granted to the Illinois Department of Children and Family Services (DCFS). However, it also recommended that custody of the children "remain intact with" Torri and respondent.

¶ 9 On June 26, 2014, the trial court conducted a dispositional hearing in the matter. Lavonia Cunningham testified she was employed as the intact supervisor for CYFS. She reviewed the home and background report prepared by CYFS for the dispositional hearing. Cunningham testified that, due to a scheduling issue, CYFS lacked additional information about respondent's girlfriend, Rachel, or his cooperation with parole. Additionally, no one had visited respondent's home or observed him with the children. Cunningham stated she wanted to obtain information about respondent's paramour, have access to respondent in his home, and also speak with his probation officer. Further, she testified that respondent had been cooperative with CYFS and, to her knowledge, Torri and respondent had been essentially sharing joint custody.

¶ 10 Respondent testified on his own behalf, stating he was employed full-time through the VA Hospital. He lived with his girlfriend, Rachel Miller, and two of his children, ages seven and two. Respondent denied having any domestic violence issues in his relationship with Rachel. He asserted he was the father of T.Y.-B. and T.Y. and shared joint custody of the children with Torri. Respondent testified he had the children on a regular basis. While working, he could only get them on weekends, but previously, he would get them during holidays and breaks and for "maybe a month or two" in the summer. Respondent stated he helped provide for the children's support and care and had space for them in his home.

¶ 11 On cross-examination, respondent agreed that it was not entirely clear that he was T.Y.'s biological father, stating he did not sign T.Y.'s birth certificate and they had not undergone deoxyribonucleic acid testing. Respondent further agreed that he saw his children less after he began working full-time; however, he had a care plan in place if he happened to have the children while he was working. Specifically, respondent stated he had other children whose mothers would help care for T.Y.-B. and T.Y. Respondent testified he had 10 children, all of whom he saw regularly. On occasions he had T.Y.-B. and T.Y., he would make sure he had some of his other children too. Respondent stated he would not have them all at one time but would have "at least six or seven of them."

¶ 12 At the conclusion of the evidence, the trial court granted the State's motion to continue the dispositional hearing so that additional information about respondent and his living situation could be obtained. On July 8, 2014, CYFS filed an addendum to its home and background report. The addendum stated the CYFS caseworker, Andra Duckworth, spoke with respondent's parole officer, who reported respondent was "in compliance with the stipulations of his [p]arole requirements except for getting his assessment done for his [d]rug [s]creening." Respondent was not scheduled to be discharged from parole until November 27, 2015. Further, he was required to have random drug drops, which had been negative.

¶ 13 The addendum showed respondent's home had been inspected and no safety concerns were identified. Duckworth also conducted an integrated assessment on Rachel. The assessment showed Rachel was employed full-time and pursuing a degree in business administration. She reported being in a relationship with respondent off and on for 12 years and that they had two children together. Rachel denied any domestic violence issues in her relationship with

respondent. The report further showed, in November 2009, Rachel had been convicted of driving under the influence.

¶ 14 On July 14, 2014, the trial court conducted the continued dispositional hearing. Duckworth testified she had been a caseworker in the matter for three weeks. She prepared the addendum report and spoke with the caseworker who visited respondent's home and found no concerns. Duckworth testified CYFS's recommendation was for all of the children to remain with Torri and that respondent "is involved and will receive services from the agency." She agreed respondent had been cooperative with her and stated that, to the best of her knowledge, Torri and respondent got along and cooperated in terms of parenting their children. However, upon further examination, Duckworth acknowledged she had not yet had a chance to look into Torri and respondent's parenting relationship.

¶ 15 At the conclusion of the hearing, the trial court found it in the minors' best interests to be made wards of the court and adjudged neglected. It found Torri fit, able, and willing to exercise custody and that continuation of the minors' custody in her care would not endanger their health, safety, or best interests. The court found respondent unfit and unable to care for, protect, train, or discipline his child, noting its "finding only refer[red] at that time to [T.Y.-B.]," as "that ha[d] been the only adjudication in regard to [respondent] as a parent in th[e] case, at th[at] time." The court ordered custody of all the minors to continue with Torri, but placed guardianship of the minors with DCFS. It further ordered that respondent "establish and maintain a regular course of visitation with his child, [to be] supervised or unsupervised as determined in the discretion of [DCFS]." The court also ordered paternity testing for respondent and T.Y.

¶ 16 On July 15, 2014, the trial court entered its disposition order. It reiterated its find-

ings and orders as set forth orally at the dispositional hearing. Additionally, with respect to its finding that respondent was unfit and unable to care for T.Y.-B., the court stated as follows:

"The Court further finds that [respondent] has a significant criminal history. He is currently on mandatory supervised release. He has a number of drug arrests. He has not engaged in remedial services to address drug abuse. [Respondent] apparently has a number of children with a number of different women. They do not reside with him."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent argues the trial court's dispositional order was against the manifest weight of the evidence. Specifically, he contends the court erred in finding him unfit and unable to care for his child, "thereby foreclosing him as a temporary custodian."

¶ 20 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) "provides the procedures that must be followed for determining whether a minor should be removed from his or her parents' custody and made a ward of the court" and sets forth a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step requires a trial court to conduct an adjudicatory hearing to determine whether a minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336 (quoting 705 ILCS 405/2-18(1) (West 2010)). If a court finds a minor abused, neglected or dependent, it moves to the second step and conducts a dispositional hearing to determine "whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012

IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)).

¶ 21 If a minor "is to be made a ward of the court, the [trial] 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). Once a child is made a ward of the court, the trial court may enter the following types of dispositional orders:

"A minor under 18 years of age found to be neglected *** may be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [of the Act]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act." 705 ILCS 405/2-23(1)(a) (West 2012).

Parental fitness is relevant to the court's consideration of an appropriate disposition, as section 2-27 of the Act (705 ILCS 405/2-27 (West 2012)) provides for removal of a minor from his parents' custody upon a determination that 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 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."

¶ 22 On review, the trial court's dispositional 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 finding of the trial court is against the manifest weight of the evidence if a review of the record clearly demonstrates that the result opposite to the one reached by the trial court was the proper result." *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991). "This standard of review recognizes that the trial court is in a much better position than is this court to observe the witnesses, assess credibility, and weigh the evidence" and "[f]or this reason, a reviewing court will not overturn the trial court's findings merely because the reviewing court might have reached a different decision." *T.B.*, 215 Ill. App. 3d at 1062, 574 N.E.2d at 896.

¶ 23 Here, respondent challenges only the trial court's finding that he was unfit and unable to care for T.Y.-B. In particular, he argues "the manifest weight of the evidence in th[e] record is that [he] is both fit and able." Respondent notes he had a *de facto* joint custody arrangement with Torri, there was no indication his home was in any way injurious to T.Y.-B., and the circumstances resulting in T.Y.-B. being neglected occurred while the minor was in the care of Torri and not respondent.

¶ 24 After reviewing the record, we cannot say it clearly demonstrates that the trial court should have reached the opposite result with respect to its determination of respondent's fitness. In reaching its decision, the court relied on respondent's "significant criminal history," that he was currently on mandatory supervised release, that he had a number of drug arrests, and that he had not engaged in remedial services to address his drug abuse. On appeal, respondent

