

2015 IL App (1st) 143065-U
No. 1-14-3065
March 24, 2015

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF JASMINE B.,)	Appeal from the Circuit Court
Minor-Respondent-Appellee,)	Of Cook County.
)	
(The People of the State of Illinois,)	
)	No. 13 JA 1156
Petitioner-Appellee,)	
)	The Honorable
v.)	Maxwell Griffin, Jr.,
)	Judge Presiding.
Calvin B.,)	
)	
Respondent-Appellant-Father).)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* A party waives his challenge to a finding of dependency when he concedes at trial that the evidence supports a finding of dependency. When the record supports a finding of dependency, the appellate court need not review a finding of neglect that provided a second basis for proceeding to a dispositional hearing. The evidence concerning continuing difficulties in the relationship between the minor and her father warranted the trial court's decision to award custody of the minor to DCFS.

¶ 2 The State petitioned to make Jasmine B. a ward of the court. The trial court found Jasmine dependent and neglected, and awarded custody of Jasmine to a guardianship administrator. Jasmine's father, Calvin B., argues on appeal that the trial court should not have found Jasmine dependent or neglected, and placement with Calvin would best serve Jasmine's interests.

¶ 3 We find that Calvin admitted that the evidence supported a finding of dependency. Because that finding required a dispositional hearing, we need not address the finding of neglect. The evidence supported the trial court's conclusion that awarding custody to the guardianship administrator, while retaining a permanency goal of reuniting Jasmine with Calvin, served Jasmine's best interests. Accordingly, we affirm the trial court's judgment.

¶ 4 **BACKGROUND**

¶ 5 On December 24, 1996, Veronica H., a high school student, gave birth to Jasmine B. Calvin B. acknowledged Jasmine as his child. Before Jasmine's first birthday, police arrested Calvin, and Calvin spent the next 14 years in prison. Jasmine rarely saw Calvin during his lengthy incarceration, especially after the State transferred him to a prison in southern Illinois.

¶ 6 Veronica married Darryl S. Domestic violence pervaded their relationship. In October 2008, Veronica admitted that she had struck Jasmine, and Jasmine bore scars to confirm Veronica's admission. Veronica's mother, Nellie H., took custody of Jasmine.

¶ 7 The prison released Calvin on parole in 2011. In November 2012, Calvin filed a petition for custody of Jasmine. The court awarded Calvin temporary custody and ordered an

evaluation of the home where Calvin lived with his mother, Jacqueline B., and his stepfather, George B. The caseworker reported that Jasmine said she liked Jacqueline and George, but she said Calvin "is too clingy and it's irritating." Calvin admitted to the caseworker that he "slapped Jasmine in the recent past when he found her having sex with a male in their basement without a condom." On April 30, 2013, the court awarded custody of Jasmine to Jacqueline.

¶ 8 At a hearing in August 2013, the court found that Calvin removed Jasmine from Jacqueline's home, in violation of the April 2013 order. The court also found that Calvin violated the April 2013 order by physically punishing Jasmine. The court transferred custody of Jasmine to Nellie.

¶ 9 Jasmine ran away from Nellie's home on October 14, 2013. She slept on the streets and in parks for several weeks. She went to the Emergency Reception Center on December 9, 2013. That day, Nellie filed a motion to relinquish custody of Jasmine. An investigator for the Department of Children and Family Services (DCFS) took protective custody of Jasmine on December 9, 2013. On December 11, 2013, the court awarded temporary custody of Jasmine to Debra Dyer-Webster, a DCFS guardianship administrator.

¶ 10 Tracy DeTomasi, a licensed social worker, interviewed Jasmine, Calvin and Veronica separately in January 2014. According to DeTomasi,

"Jasmine reported that she did not like her father *** and rated her relationship with him as a '0.' She stated that she did not like the way he spoke to her or the way he punished her, specifically hitting her. *** Jasmine stated that he

'backhanded' her on three occasions for lying or 'having an attitude' with him. She stated she lost respect for him when this occurred because he did not have that level of authority over her even if he was her father. ***.

*** [Jasmine] moved to the Emergency Reception Center (ERC) on 12/9/13 and was enjoying it there. She reported that she did not want to return to her family and would rather go to foster care."

¶ 11 DeTomasi, Derrick Cargle and Lisa Lunford of DCFS together prepared a report for the court on Jasmine's case. Because of Jasmine's history of running away and "negative interactions" with her family, they recommended placement in foster care. They added:

"It is recommended that Jasmine continue to visit with her father *** as desired by Jasmine. The visits should be based around the rules and structure of the residential facility and in the agreement and best interest of Jasmine. While visiting, Jasmine and her father should work towards communicating in a healthy manner and discuss achievements and successes as well as challenges. Visits should be an opportunity to practice healthier communication styles that were not previously established. ***

*** When deemed appropriate by Jasmine's individual therapist, it is recommended that she be offered family therapeutic sessions with her mother and father at separate times. *** It will be important for Jasmine to address the rejection and

abandonment that she has likely felt from both of her parents as well as the physical abuse she experienced in family therapy. Jasmine reported witnessing domestic violence while living with her mother and has been unable to express emotions about this. It will be important for Jasmine to be provided a safe space to openly communicate with her parents, which may support the family towards resolving past issues that have created a strained parent and child relationship.

The prognosis for the reunification of Jasmine to her father *** was guarded at the time of the [assessment] process. [Calvin] reported that he was able to manage Jasmine's behaviors and had a strong desire to have her return home. However, Jasmine stated that she did not want to live with her father any longer. In order for reunification to occur, [Calvin] would need to complete the recommended services including individual and family therapy. It will be important for [Calvin] and Jasmine to discuss [Calvin's] incarceration and how that has impacted the father-daughter relationship. In addition, it will be important to establish trust and boundaries within the relationship. Jasmine would need to express a desire to return to her father's care."

¶ 12 The trial court held an adjudication hearing in June 2014. Cargle testified that Veronica had gone into hiding to avoid her husband. Cargle could not find her to assess her for services. Cargle testified that Jasmine had developed a bond with Calvin and a good relationship with Calvin's fiancée. Jasmine had a finished basement to herself in the home of

Calvin's fiancée. Cargle also said that Calvin made good progress with DCFS services, and he had met all of the goals for those services as of the hearing date.

¶ 13 However, Cargle recommended making Jasmine a ward of the court, with a goal of returning Jasmine to Calvin's custody if Calvin and Jasmine progressed well enough in counseling. Cargle testified that he asked Jasmine about having Calvin teach her to drive. She said, "Well, I don't talk to him much." She preferred to ask her grandparents to teach her to drive.

¶ 14 In a report dated August 21, 2014, a counselor found that Calvin was "diligent in his desire to build and maintain a better relationship" with Jasmine, and he "[was] satisfactorily meeting the goals of his individual therapy sessions." The sessions with both Jasmine and Calvin had "just begun and [Calvin] and Jasmine [were] working towards satisfactorily meeting their goals of family therapy."

¶ 15 Calvin's attorney argued that the evidence did not prove that Calvin neglected Jasmine. But the attorney said that the facts supported a finding of dependency under section 2-4(1)(a) of the Juvenile Court Act (Act). 705 ILCS 405/2-4(1)(a) (West 2012). On August 22, 2014, the trial court entered an order adjudicating Jasmine as both a neglected minor under section 2-3(1)(a) of the Act (705 ILCS 405/2-3(1)(a) (West 2012)), and a dependent minor. The court then entered a disposition order, finding both Veronica and Calvin unable to care for, train or discipline Jasmine. The court vacated its temporary custody order dated December 11, 2013, but again awarded custody to Dyer-Webster and granted her authority to place

Jasmine. The court ordered visits with Calvin to continue at the discretion of DCFS. Calvin now appeals.

¶ 16

ANALYSIS

¶ 17

On appeal, Calvin contends that the trial court erred (1) when it found Jasmine dependent; (2) when it found Jasmine neglected; and (3) when it awarded custody of Jasmine to Dyer-Webster. We apply a manifest weight of the evidence standard to our review of all of the trial court's factual findings. *In re Tyrese J.*, 376 Ill. App. 3d 689, 701 (2007); *In re Ryan B.*, 367 Ill. App. 3d 517, 520 (2006).

¶ 18

Dependency

¶ 19

Calvin conceded at trial that the evidence supported a finding of dependency. Thus, he waived any objection to the finding of dependency and the adjudication of wardship. *In re William H.*, 407 Ill. App. 3d 858, 870 (2011).

¶ 20

Neglect

¶ 21

Calvin argued at trial that the evidence did not support a finding of neglect. Calvin cites no authority permitting an appellant to challenge a finding of neglect when the trial court properly found dependency, and that finding justified the adjudication of wardship. In *In re Faith B.*, 216 Ill. 2d 1 (2005), the trial court found the minor both abused and neglected. Our supreme court found that the evidence sufficiently supported one of the grounds for finding the minor neglected. The *Faith B.* court said, "Because of our conclusion regarding neglect based on injurious environment, we need not review the circuit court's additional finding that the minors were abused or neglected based on physical abuse." *Faith B.*, 216 Ill. 2d at 15.

¶ 22 Like the neglect finding in *Faith B.*, the dependency finding here gave the trial court jurisdiction to proceed to the dispositional hearing. 705 ILCS 405/2-21(2) (West 2012). Just as the court in *Faith B.* did not need to review the finding of abuse when the evidence warranted a finding of neglect, we hold that we need not review the finding of neglect when the appellant conceded that the evidence warranted a finding of dependency.

¶ 23 Disposition

¶ 24 Once the court has adjudged a minor as a dependent, "the court must determine whether it is in the best interests of the child to be made a ward of the court and the 'proper disposition best serving the health, safety and interests of the minor and the public.' " *In re Austin W.*, 214 Ill. 2d 31, 43 (2005), quoting 705 ILCS 405/2-22(1) (West 2000). The *Austin W.* court explained, "In all cases, it is the health, safety and interests of the minor which remains the guiding principle when issuing an order of disposition regarding the custody and guardianship of a minor ward. The best interests of the child is the paramount consideration to which no other takes precedence." *Austin W.*, 214 Ill. 2d at 46.

¶ 25 The trial court here found Calvin "unable *** to care for, protect, train, or discipline" Jasmine, and that "services aimed at family preservation and family reunification have been *** unsuccessful." The court concluded that "[i]t is in the best interest of the minor to remove the minor from the custody of the parents, guardian or custodian."

¶ 26 A therapist reported that Calvin and Jasmine had formed a bond, and both made progress toward reunification in therapy. However, not long before the adjudication hearing, Jasmine told one caseworker that she had a poor relationship with her father. She later told another

caseworker that she did not talk to Calvin much. Jasmine reported that Calvin struck her several times in the past. We find that the evidence sufficiently supports the findings that, by the time of the dispositional hearing, services aimed at reunification had not yet succeeded, and Calvin did not yet have the kind of relationship with Jasmine that would permit him to train or discipline Jasmine effectively. We find that the evidence supports the trial court's conclusion that it would best serve Jasmine's interests to permit DCFS to find an appropriate placement for Jasmine while Jasmine and Calvin continue to work toward the eventual goal of family reunification. See *In re Star R.*, 2014 IL App (1st) 140920, ¶ 33.

¶ 27

CONCLUSION

¶ 28

Calvin waived any objection to a finding of dependency for Jasmine. That finding required a dispositional hearing. The testimony and reports of DCFS caseworkers supported the trial court's decisions to award custody of Jasmine to Dyer-Webster and to permit Dyer-Webster to place Jasmine, while Jasmine and Calvin continued to work toward the goal of family reunification. Accordingly, we affirm the trial court's judgment.

¶ 29

Affirmed.