2015 IL App (2d) 141194-U
No. 2-14-1194
Order filed March 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re TRAVAUGHN M., a Minor	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	No. 14-JD-404
	)	
	)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. Travaughn M., Respondent-Appellant).	)	Valerie Ceckowski, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶1 *Held*: Respondent forfeited his claim that the State failed to provide summons and notice of his delinquency petition to his noncustodial father under the Juvenile Court Act, and he argued that the State's failure constituted plain error. The State's failure to provide summons and notice did not constitute plain error because the State was not required to provide summons or notice of the juvenile proceedings to respondent's noncustodial father under a statutory exception. We therefore affirmed.

¶2 Respondent, Travaughn M., a minor, was charged with three counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (West 2012)). The petition to adjudicate respondent a delinquent minor listed his mother, aunt, and father as additional respondents but only provided a name and address for his mother and aunt. Summonses were issued for the

delinquency petition but not for respondent's father.

¶3 Respondent was convicted of all three counts of AUUW. After a motion to reconsider, two counts were reversed. Respondent appeals his remaining conviction by arguing that the State failed to provide summons and notice of the adjudicatory proceeding to his father, as required by section 5-525(1)(a) of the Juvenile Court Act (Juvenile Act) (705 ILCS 405/5-525(1)(a) (West 2012)). For the reasons set forth herein, we affirm.

¶4 I. BACKGROUND

¶5 On August 6, 2014, the State filed a petition to adjudicate respondent a delinquent minor, alleging three counts of the offense of AUUW and providing the names and addresses of respondent's mother and aunt. The petition stated that his father was "not listed."

¶6 After an adjudicatory hearing, the court made its findings and rulings in a September 22, 2014, oral order. The court found respondent guilty on all three counts. Respondent filed a motion to reconsider the guilty finding, or for a new trial, on October 7, 2014, amended on November 12. Respondent also filed a social history report (SHR) on October 10, 2014, in which he identified his biological father as Lorenzo Tanner. Lorenzo was listed as living in Beloit, Wisconsin, but his specific address was unknown and no phone number was listed for him. Under "Family Dynamics," the SHR provided that respondent "recently had contact with his father. Mr. Tanner is reportedly residing in Wisconsin. [Respondent] indicated that his father had agreed to visit him; however, [respondent] was arrested and unable to meet with him." According to respondent's mother's statement in the SHR, Lorenzo had never been involved in respondent's life: their relationship had ended in 1998 and they had not had contact with him since then.

¶7 On November 20, 2014, the trial court partially granted respondent's motion to reconsider the guilty finding or for new trial. It granted the motion to reconsider counts I and II, finding that the State failed to present sufficient evidence as to a material element of those counts, that is, they failed to present evidence that the unlawful weapon was concealed. The court denied the motion to reconsider, or for a new trial, as to count III.

¶8 Respondent timely appealed.

¶9 II. ANALYSIS

¶10 Respondent raises one issue on appeal: whether the State deprived respondent of due process by failing to serve summons and notice on his father of his delinquency petition. Respondent admits that the issue was forfeited below, and he argues that the failure to provide summons and notice constituted plain error.

¶11 Respondent argues that error occurred as follows. Error occurred when the State failed to provide notice to respondent's father of the petition to adjudicate the respondent a delinquent minor, as required under section 5-525(1)(a) of the Juvenile Act (705 ILCS 405/5-525(1)(a) (West 2012)). Failure to provide notice under the Juvenile Act violates due process. See *In re C.R.H.*, 163 Ill. 2d 263, 268-69 (1994) ("[A]dequate notice to a minor and his or her parents is a requirement of due process."). An exception to notice exists if the parent does not reside with the minor, does not pay child support, and does not communicate with the minor on a regular basis. *See* 705 ILCS 405/5-525(1)(a)(ii) (West 2012). Even if a parent's address is initially unknown, the State has a duty to exercise due diligence to obtain that information. Yet, the State did not attempt to ascertain information about respondent's father other than to state on the petition that his address was "not listed." It did not ascertain respondent and his father's relationship status, despite that the father's name and city of residence were provided in the

SHR. The failure to exercise due diligence in obtaining more information about respondent's father violated respondent's statutory and due process rights.

¶12 Respondent continues that the SHR showed that respondent had been in contact with his father and that they had planned to meet with one another. They did not meet because respondent was arrested. Nonetheless, this showed that respondent and his father were attempting to have a relationship, and therefore the Juvenile Act statutory exception for notice to parents that do not communicate with their minor child on a regular basis did not apply here. Excusing notice to respondent's father in this case would run contrary to the purposes of the Juvenile Act.

¶13 Respondent admits that he forfeited a challenge to the State's failure to provide notice to his father by not objecting in the circuit court. However, he argues that this error is reviewable under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) because failure to provide respondent's father notice was error so serious that it affected the fairness of the proceedings and challenged the integrity of the judicial process. He cites *In re M.W.*, 232 Ill. 2d 408, 431-32 (2009), to support that the State's failure to give notice to the father constituted error.

¶14 Respondent additionally argues that although his mother was present at all proceedings, there "may be a question concerning her ability to properly represent her son or be there for support," noting that a temporary legal guardian had been appointed during respondent's prior dealings with the court. The court also had ordered respondent committed to the Department of Juvenile Justice because it found his mother was unable to care for, protect, train, or discipline him. The appointment of a temporary guardian and his commitment showed that his mother did not provide the parental involvement and support the Juvenile Act envisions.

¶15 The State responds as follows. There was no plain error in this case. First, the respondent's father met the statutory requirements for exemption from notice under the Juvenile Act. The one case respondent cites, *In re. M.W.*, does not aid him because the minor in that case could not demonstrate plain error in the failure to provide notice to the minor's father when her mother and counsel were present at all of the proceedings—the same as occurred here. Moreover, respondent's claim that the State did not attempt to ascertain information about respondent's father is unsupported by the record. The fact that he was identified as "not listed" showed the State attempted to locate him but could not. The SHR provided his name and city of residence, but it was provided by respondent after the guilty finding. The SHR also indicated, via respondent's mother's statement, that respondent's father had not been involved in his life and that they had had no contact since 1998.

¶16 The State argues that this case is similar to *In re Darren M.*, 368 Ill. App. 3d 24, 33 (2006), in which the mother made statements that the father was not involved in the minor's life, and the minor did not experience prejudice because his mother and attorney were present at all juvenile proceedings against him.

¶17 Because the issue of notice was forfeited below, or, we may say, respondent procedurally defaulted by failing to raise the issue of notice, we must proceed under the plain-error analysis. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) ("When a defendant has forfeited appellate review of an issue, the reviewing court will consider only plain error."); see *People v Walker*, 232 Ill. 2d 113, 124 (2009) ("The plain-error doctrine is a limited and narrow exception to the general rule of procedural default."); *People v. Keene*, 169 Ill 2d 1, 10 (1995) (procedural defaults are excused for three categories of error, including "plain" errors). The plain error rule bypasses normal forfeiture principles and allows a reviewing court, in specific circumstances, to

consider unpreserved claims of error. *Thompson*, 238 Ill. 2d at 613. First, the reviewing court must determine whether any error occurred. *Id.* Then, if clear and obvious error occurred: (1) the defendant must show that the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant (*i.e.*, the defendant must show prejudicial error); or, alternatively, (2) the defendant shows that the error was serious regardless of the closeness of the evidence, that is, the error affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). Moreover, "[a] procedural default will not preclude review of an issue involving 'substantial rights' if to honor the bar would work 'fundamental [un]fairness.' " *Keene*, 169 Ill. 2d at 17. "Plain error marked by 'fundamental [un]fairness occurs only in situations which 'reveal breakdowns in the adversary systems,' as distinguished from 'typical trial mistakes.' " *Id.*

¶18 First, regarding the State's diligence in providing notice, the name and general location of the father was not known by the State until after the guilty finding was rendered. This information was provided to the court in respondent's SHR only after respondent had been adjudicated delinquent. We may assume the State was diligent in its attempts to locate a parent where the respondent does not raise some question in the circuit court about the State's failure to identify or locate the noncustodial parent, as was the case here. *In re J.P.J.*, 109 Ill. 2d 129, 136-37 (1985).

¶19 Second, we agree with the State that there could be no error here when it failed to provide notice to respondent's father under the Juvenile Act, even if the State had failed to exercise diligence in providing notice. The particular section of the Juvenile Act, section 5-525(1)(a), requires that summons be directed to "the minor's parent, guardian or legal custodian *** except

that summons need not be directed *** (ii) to a parent who does not reside with the minor, does not make regular child support payments to the minor, to the minor's other parent, or to the minor's legal guardian or custodian *** and has not communicated with the minor on a regular basis." 705 ILCS 405/5-525(1)(a) (West 2012). We note that the exception in section 5-525(1)(a)(ii) lists the necessary criteria in the conjunctive, *i.e.*, all three conditions must be met for the exception to apply. See *In re C.L.*, 392 Ill. App. 3d 1106, 1111 (2009) (section 525(1)(a)(ii) notice exception not met where minor did not reside with mother and had little contact with her, but the record was silent as to whether she paid child support to the minor or minor's father).

¶20 The record establishes that respondent did not reside with his father. Respondent does not argue whether his father paid child support to him or his mother, nor does he cite to any portion of the record that may show whether he paid child support or not. Therefore, we construe this fact against him and assume he was not paying child support to respondent or his mother. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (appellant has burden to present a sufficiently complete record; any doubts arising from the inadequacy of the record will be resolved against the appellant); see also Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued in brief are forfeited).

¶21 Moreover, respondent did not have a significant relationship with his father. Respondent characterizes his recent contact with his father as "attempting" to have a relationship with his father. Respondent first indicated that he had had contact with his father in the SHR, which he submitted after a guilty finding was rendered against him. Nonetheless, the statute requires "regular" contact, and we cannot say that one instance of contact over the phone—which is all the record supports since 1998—can constitute regular contact under section 5-

525(1)(a)(ii). See *In re Ricardo A.*, 356 Ill. App. 3d 980, 988 (2005) (no regular contact found where the respondent claimed to have contact with his father in the last year but provided no evidence of a significant relationship or how much contact they had, and the respondent did not know of where his father lived), *overruled on other grounds by In re Samantha V.*, 234 Ill. 2d 359 (2009); *In re Interest of L.C.C.*, 167 Ill. App. 3d 670, 673 (1988) (no regular contact found where the father appeared at the police station after the respondent's arrest but prior to the delinquency petition, the respondent did not know father's address, and the record was not clear how much contact they had).

¶22 Without error, respondent cannot show plain error. See *People v. Hanson*, 238 Ill. 2d 74, 118-19 (2010) (trial court's jury instruction was not error, and therefore plain error argument failed). Even otherwise, we also reject respondent's argument that the failure to serve his father undermined the fairness of the proceedings against him. Respondent relies on *In re M.W.*, 232 Ill. 2d 408 (2009), to support that plain error is present in his case. However, our supreme court held in *In re M.W.* that failure to provide notice of all charges to the respondent's noncustodial father was not error so serious that it undermined the judicial process. *Id.* at 439-40. There, the respondent's mother and counsel were present at all proceedings, and the presence of the respondent's father could not have altered the outcome of the proceedings even if he had persuaded the respondent not to testify. *Id.* at 439. The differences between this case and *In re M.W.* are that the father in *In re M.W.* received notice of some but not all charges against the respondent, whereas here respondent's father received no notice at all; and respondent's argument here that his mother may not have been able to provide proper support to him, as evidenced in part by the appointment of a temporary guardian. Respondent cites no legal authority for his argument that his mother's questionable support required notice to his father in

order to maintain the fundamental fairness of the proceedings, and we therefore deem this argument forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Moreover, our supreme court stated in *In re M.W.* that if a failure to provide notice fundamentally undermined the integrity of proceedings under the Juvenile Act, it could not have affirmed three separate cases under the Juvenile Act where no notice was given of any charges.[1] *In re M.W.*, 232 Ill. 2d at 440. Accordingly, we do not find that the failure to provide notice to respondent's noncustodial father, without more, automatically impugned the integrity of the proceedings in this case.

¶23 III. CONCLUSION

¶24 The State was not required to provide notice to respondent's noncustodial father under the Juvenile Act, and therefore no error occurred that could result in plain error. Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶25 Affirmed.

[1] In two of the cases, no notice was provided. In the third case, notice by publication was attempted but flawed. *In re J.P.J.*, 109 Ill. 2d at 132.