2015 IL App (2d) 141216-U
No. 2-14-1216
Order filed April 21, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.M., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	
	)	No. 2014-JA-260
	)	
	)	
(People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Terrance M.	)	Mary L. Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying respondent's motion to continue; the trial court's unfitness finding was not contrary to the manifest weight of the evidence, and therefore, the court did not abuse its discretion in failing to place the minor with respondent; affirmed.

¶ 2 Respondent, Terrance M., appeals the dispositional order finding him unfit, unwilling, or unable to retain custody of his child, A. M. Respondent contends (1) the trial court abused its discretion in denying his motion to continue; and (2) the evidence presented at the dispositional hearing did not prove he was unfit and, therefore, the trial court abused its discretion by not placing the minor with him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A.M.'s mother, Shanda White, has three children. The Department of Children and Family Services (DCFS) took protective custody of her children, including A.M., after White and her paramour, Billy Spearman, had been in a physical altercation that involved throwing bricks at one another's vehicles. This incident occurred on July 20, 2014, in the presence of B.S., one of White's children.

¶ 5 A.M. was 3 years old when the State filed a neglect petition on July 22, 2014, pursuant to section 2-3 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West 2012)). The parties stipulated to count 3 of the petition, which states that "the minor is a neglected minor in that said minor is under 18 years of age and her environment is injurious to her welfare in that the mother has a history of engaging in domestic violence, thereby placing the minor at risk of harm," pursuant to section 2-3(1)(b). (705 ILCS 405/2-3(1)(b) (West 2012)).

¶ 6 The case was set for a dispositional hearing on November 6, 2014, but was continued due to the absence of two of the attorneys for other parties involved in the case. Defendant and his counsel were present at that time. At the next scheduled dispositional hearing, on December 4, 2014, respondent's attorney made an oral motion to continue based on respondent's absence. He stated that respondent was present when the case had previously been continued and he had sent respondent two letters regarding the court hearing. Respondent's attorney believed that respondent had been held up unexpectedly. The State objected, noting that respondent had notice, everyone was present, the case already had been continued once, and the State was ready to proceed. The court denied the motion and the dispositional hearing proceeded.

¶ 7 Madelyn Pena, the Children's Home and Aid Society caseworker, testified about respondent's compliance with DCFS service plans and orders. She stated that respondent had

not completed an integrated assessment, a sexual offender assessment, and had not engaged in any other services as of December 4, 2014. Pena further stated that respondent had missed three visits with A.M. Because he had missed three visits, respondent was taken off the visitation list and he had not requested to reinstate visitation. Nor had respondent asked why he had been removed from the list.

¶ 8 Pena also testified that one time respondent had called her to reschedule a home visit and he became upset and agitated. Pena had to end the call but encouraged respondent to speak with her supervisor to discuss the matter further. The home visit was never rescheduled and since November 2014, respondent had failed to maintain regular contact with Pena.

¶ 9 The trial court found that respondent was unfit and unwilling to properly care for A.M. In its decision, the court relied on the evidence presented by Pena that respondent failed to sign consents, that visitation had ceased, and that respondent failed to contact the agency in over a month. Accordingly, the trial court ordered that A.M. be made a ward of the court with guardianship and custody to DCFS, and to allow visitation at the agency's discretion.

¶ 10 II. ANALYSIS

¶ 11 A. Continuance

¶ 12 Respondent first contends that the trial court abused its discretion in denying his request for a continuance. The circuit court has broad discretion when deciding whether to grant or deny a motion to continue, but the court must not exercise that discretion arbitrarily. *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 927 (1997). "It is within the juvenile court's discretion whether to grant or deny a continuance motion, and the court's decision will not be disturbed absent manifest abuse or palpable injustice." *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002).

¶ 13 Section 2-1007 of the Code of Civil Procedure (735 ILCS 5/2-1007 (West 2012)) governs the rules of continuances and provides, "[o]n good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment." Continuances in juvenile cases may be granted "upon written motion of a party filed no later than 10 days prior to hearing, or upon the court's own motion and only for good cause shown." 705 ILCS 405/2-14(c) (West 2012). The term, "good cause," as applied in the Act (705 ILCS 405/1-1 *et seq*. (West 2012)), is strictly construed and must be in accordance with Illinois Supreme Court Rule 231(a) through (f) (eff. Jan 1, 1970). 705 ILCS 405/2-14(c) (West 2012). The court may continue the hearing "only if the continuance is consistent with the health, safety and best interests of the minor." 705 ILCS 405/2-14(c) (West 2012).

¶ 14 Rule 231(a) states that a party moving for a continuance due to the absence of material evidence must attach an affidavit showing: (1) "that due diligence has been used to obtain the evidence, or the want of time to obtain it"; (2) "of what particular fact or facts the evidence consists"; (3) "if the evidence consists of the testimony of a witness, his place of residence, or if his place of residence is not known, that due diligence has been used to ascertain it"; and (4) "that if further time is given the evidence can be procured." Ill. S. Ct. R. 231(a) (eff. Jan. 1, 1970).

¶ 15 We find the judge did not abuse its discretion in denying the motion for a continuance. We initially note that respondent did not file a written motion with an attached affidavit no later than 10 days prior to the hearing, as required by section 2-14(c) of the Act. Rather, the motion for a continuance was presented orally by respondent's attorney right before the dispositional hearing was about to begin. His only excuse for respondent's absence was that he was late. In

fact, respondent's attorney had no idea why respondent was not there, even though respondent had notice of the hearing. All of the parties, except respondent, were present and ready to proceed, and there was no compelling reason to continue. It is clear that the trial court properly recognized the importance of avoiding undue delay and that it was not in A.M.'s best interest to grant respondent's request. See 705 ILCS 405/2-14 (West 2012) (serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor). Under these circumstances, we find the trial court did not abuse its discretion in denying the motion to continue.

¶ 16 B. Disposition

¶ 17 Respondent next argues that the evidence presented at the dispositional hearing did not prove he was unfit and, therefore, the trial court abused its discretion by not placing A.M. with him.

¶ 18 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 trial court abused its discretion by selecting an inappropriate disposition. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). A determination will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). Under a manifest weight of the evidence standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *D.F.*, 201 Ill. 2d at 498-99. A reviewing court, therefore, must not substitute its judgment for that of the trial court

regarding the credibility of witnesses, the weight to be given the evidence, or the inferences to be drawn. *Id.* at 499.

¶ 19 Respondent argues that the caseworker's testimony about visitation was inaccurate because the common law record indicates respondent only missed two visits, not three. Respondent also questions Pena's testimony regarding the phone conversation because she could not recall, within any reasonable time frame, when the call took place. Respondent further calls into question that an integrated assessment never took place but her agency's own records state otherwise. Respondent's assertions challenge the caseworker's credibility. Where the credibility of a witness is questioned, the trial court makes the credibility determination, and we will not step into the role of the fact finder.

¶ 20 Respondent claims that, even if we took the caseworker at her word, the evidence was insufficient to prove he is unfit. We disagree.

¶ 21 At the time of the hearing, the evidence showed that, respondent had not completed the recommended integrated assessment, had not completed the recommended sexual offender assessment, had not been consistent with visitation, and had not signed required consents. Also, respondent failed to maintain regular contact with the caseworker and had his visitation suspended. The trial court's determination that respondent was unfit was not against the manifest weight of the evidence. The evidence formed the basis of the dispositional order, and thus, the trial court did not abuse its discretion by committing A.M. to DCFS guardianship.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the order denying respondent's motion to continue and we affirm the dispositional order finding respondent unfit and placing A.M. in the custody of DCFS.

¶ 24 Affirmed.