2015 IL App (3d) 140367-U

Order filed February 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re A.W., a Minor,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
(THE PEOPLE OF THE STATE	)	Peoria County, Illinois.
OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-14-0367
	)	Circuit No. 13-JA-291
v.	)	
	)	
JOSEPH W.,	)	Honorable
	)	David J. Dubicki
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that the respondent was unfit was not against the manifest weight of the evidence.

¶ 2 Respondent, Joseph W., is the biological father of the minor A.W. He appeals from the trial court's dispositional order under the Juvenile Court Act (the Act) and challenges the trial court's order finding that he was unfit. 705 ILCS 405/1-1 *et seq*. (West 2012). On appeal, the

respondent maintains that he completed all services required of him following the adjudication of neglect and was, therefore, dispositionally fit. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The minor, A.W., was born February 18, 2013. On that date, the child's mother and the respondent were living together. On February 20, 2013, the respondent signed a voluntary acknowledgement of paternity regarding A.W. On October 30, 2013, the State filed a petition alleging that A.W. was neglected due to an injurious environment created by the presence of the respondent in the child's household. The petition alleged that the respondent had physically abused his one-year-old son (W.A.W.) on or about November 4, 2012. The petition further alleged that the one-year-old was subsequently found to have suffered shaken baby syndrome in June 2010, while in the respondent's care, which resulted in a skull fracture, cranial hemorrhaging, retinal hemorrhaging, and rib fractures. The petition further alleged that the respondent had a criminal history including a conviction in 2012 for domestic battery resulting from the 2010 incident. The State sought that A.W. be made a ward of the court, with DCFS to be appointed as guardian.

¶ 5 On March 3, 2014, an adjudicatory hearing was held. The State introduced evidence regarding the respondent's domestic battery conviction for injuries inflicted on W.A.W., including a DCFS report describing cuts, welts, bruises, abrasions, and oral injuries to W.A.W. The court found by a preponderance of the evidence that the respondent had physically abused W.A.W. The court then held that, under the principle of anticipatory neglect, the respondent's presence in the household created an injurious environment for A.W. The court admonished the respondent that he must cooperate with DCFS, comply with all service plans, and correct the conditions that required the child to be placed in care or risk the termination of his parental

rights. The record established that the child's mother was found to be dispositionally fit, after the respondent moved out of her house, and DCFS was permitted to place the child in the custody of the mother.

¶ 6 On April 14, 2014, a dispositional hearing was held regarding the respondent only. The trial court indicated that all evidence entered during the adjudicatory hearing would be considered at the dispositional hearing. In addition, questioning of Danielle Stanley, the caseworker assigned to the case, established that the respondent had been in family therapy from the time of the previous hearing until September 12, 2013. On that date, the respondent was transferred from group to individual counseling in order to address individual psychological recommendations. The report prepared by the group counselor informed Stanley that the respondent did not believe he needed to be in a domestic violence class, was not seriously addressing his personal issues, was providing superficial and generic responses to questions posed during group therapy, and was "doing next to nothing in the class." The respondent was then referred to Jennifer Labanowski, a marriage and family counseling therapist, for individual counseling. Labanowski issued a report indicating that the respondent had successfully completed her domestic violence and conflict resolution programs.

¶ 7 Also contained in the record was a report by Dr. Joel Eckert, a licensed clinical psychologist, who indicated that the respondent should be "carefully monitored to try to ensure that [he] does not represent a risk to [A.W.] or any other child for that matter." Dr. Eckert further opined that the respondent had unresolved mental and personality disorders that would "require significant environmental support and external structure, in an effort to deter maladaptive behavior."

¶ 8 Following the close of evidence, the trial court found that the respondent was dispositionally unfit, and it was in the best interest of A.W. that she be made a ward of the court. The court noted Labanowki's report that the respondent had successfully completed her counseling program, however, it also noted that Labanowski's observations were completely at odds with the report of the respondent's performance in group therapy and Dr. Eckert's observations. The court expressed concern that the respondent's presence would still constitute an injurious environment, and found him to be "unfit at this time." The court ordered the respondent to perform further tasks and receive additional services. The respondent appeals the court's finding that he was dispositionally unfit.

¶ 9 ANALYSIS

¶ 10 On appeal, the respondent challenges the finding that he is dispositionally unfit. He argues that the court erred in finding him dispositionally unfit after he successfully completed parenting and domestic violence programs. The respondent maintains that successful completion of these programs removed the conditions that lead to A.W. being adjudicated neglected. We disagree.

¶ 11 After a court adjudicates a child neglected, it must hold a dispositional hearing to determine whether it is in the best interest of the child to make him or her a ward of the court. 705 ILCS 405/2-22(1) (West 2012). To make the child a ward of the court, the trial court must find that the parent is dispositionally unfit to care for the child. 705 ILCS 405/2-22(1) (West 2012). If the trial court makes the child a ward of the court, it must determine the proper disposition, considering the best interest of the minor as the overriding concern. *In re Beatriz S.*, 267 Ill. App. 3d 496 (1994). At the dispositional phase, all evidence helpful in determining the minor's best interest "including oral and written reports, may be admitted and may be relied

upon to the extent of its probative value." 707 ILSC 405/2-22 (West 2012). A trial court's finding of unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that court should have reached the opposite conclusion. *In re. C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005). Moreover, it is well-settled that the trial court is in the best position to make factual findings, weigh evidence, and assess the credibility of witnesses. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990).

¶ 12 In the instant matter, the trial court based its initial finding that the respondent was unfit on a theory of anticipatory neglect, which allows a finding of unfitness where the parent has been found to have neglected another child. *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004). Although there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child, proof of neglect of one child is evidence of neglect of another child for whom the parent is responsible. *In re Arthur H.*, 212 Ill. 2d at 482. Here the State presented sufficient evidence to support a finding of an injurious environment under a theory of anticipatory neglect. The unrebutted evidence that the respondent had abused and neglected another child, W.A.W., including the fact that he was convicted of domestic battery for his treatment of W.A.W. was sufficient to support the court's finding that the respondent was unfit.

¶ 13 The respondent's argument that he has corrected the circumstances which gave rise to his treatment of W.A.W. and therefore was no longer unfit does not convince us that the trial court's finding that he remained dispositionally unfit is against the manifest weight of the evidence. At the dispositional phase, the trial court must decide whether the health, safety, and best interest of the child requires that the respondent's right to custody of the minor should be limited, and a finding of dispositional unfitness does not result in the termination of parental rights. *In re*

Lakita B., 297 Ill. App. 3d 985,995 (1998). The respondent's argument that he was no longer dispositionally unfit due to his successful completion of family and domestic violence programs fails for two reasons: (1) the record does not establish that he, in fact, successfully completed the domestic violence program; and (2) even if he successfully completed the program other evidence existed which supported the trial court's finding that he remained unfit.

¶ 14 The record established that his performance in the group domestic violence program had been unsatisfactory at the time he was removed from the program and transferred to individual counseling. While the record indicated that the respondent's individual counselor was satisfied with his performance in her program, the respondent suggests that the trial court erred in considering his lack of satisfactory performance in the group program. We disagree. The trial court was at liberty to consider all evidence in the record, and it cannot be said that the decision to weigh the unsuccessful performance in the group setting as more significant than the individual setting was against the manifest weight of the evidence. However, even if it could be said that the respondent successfully completed domestic violence and family counseling, the psychological evaluations and opinion given by Dr. Eckert established that the respondent had unresolved mental and personality issues that continued to place any child in the custody of the respondent at risk. Moreover, evidence that a parent completed services, or refrained from objectionable conduct following the removal of a child, does not necessarily negate the initial failing that triggered intervention and removal of the child. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). We find, therefore, that the trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 15 The judgment of the circuit court of Peoria County is affirmed.

¶ 16 Affirmed.