2015 IL App (3d) 140844-U

Order filed July 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

IN THE INTEREST OF L.H.-S.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor.	)	Peoria County, Illinois
	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-14-0844
	)	Circuit No. 14-JA-97
v.	)	
	)	
JAMES S.,	)	Honorable
	)	David J. Dubicki,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court obtained personal jurisdiction over respondent before properly adjudicating the minor neglected and then finding respondent to be an unfit parent.

¶ 2 Respondent contends the trial court did not have personal jurisdiction over respondent. Alternatively, respondent claims the trial court improperly allowed the State to admit hearsay evidence during the adjudicatory hearing, failed to specify respondent's acts or omissions that

contributed to the minor's injurious environment, and erroneously found that respondent was an unfit parent. We affirm.

¶ 3 BACKGROUND

¶ 4 The State filed a juvenile petition on April 8, 2014, alleging that L.H.-S., who was born on December 31, 2012, was a neglected minor due to an environment that was injurious to her welfare. According to the amended petition adjudicated by the trial court, the minor's mother was found to be an unfit parent in Peoria County case No. 07-JA-113 and she remained unfit on April 8, 2014. Paragraph D of the amended petition alleged respondent had a criminal history that included the following convictions: theft (2006); deceptive practices (2005); intimidation (2002); DUI (2002); and unlawful possession of a weapon by a felon (1991). Paragraph G of the amended petition alleged that respondent has "mental health problems."

¶ 5 The record shows that on April 10, 2014, the State attempted service on respondent by mailing a letter to 1535 S. Folkers Avenue, Peoria, Illinois. The letter included a notice of parent's and children's rights to hearing on temporary custody. On April 16, 2014, the Peoria County State's Attorney's Office attempted to personally serve respondent at the Folkers Avenue address. However, the process server could not reach the door to attempt service due to a locked fence surrounding the property.

¶ 6 The record also shows the State unsuccessfully attempted personal service on April 17 and April 22, 2014, at a second address, 301 N.E. Jefferson Avenue, Apartment 513, Peoria, Illinois. The arraignment order filed April 24, 2014, states, "[n]o other addresses are known."

¶ 7 The State filed an affidavit for service by publication on April 25, 2014, indicating that diligent inquires had been made to locate respondent through five different sources, and respondent could not be served by either personal service or by certified mail. On May 7, 2014,

the State filed a certificate of publication showing that notice of a May 22, 2014, adjudicatory hearing, naming respondent as a party, was published in the Peoria County News Bulletin on April 30, 2014.

¶ 8 On May 22, 2014, the trial court found it had personal jurisdiction over respondent through service by publication. Later, on June 5, 2014, the State filed a petition for writ of *habeas corpus*, asking the McLean County Sheriff to transport respondent from jail to the shelter care hearing scheduled for June 6, 2014.

¶ 9 On June 6, 2014, respondent and the minor's mother were present at the hearing. The trial court's written arraignment order found the court had personal jurisdiction over the minor, the minor's mother, and respondent, the putative father. The court continued the matter to conduct a paternity review and to allow the parties to answer the juvenile petition. On June 25, 2014, respondent personally appeared in court and submitted a written voluntary acknowledgment of paternity (VAP). On that date, the trial court appointed counsel for respondent.

¶ 10 On July 30, 2014, respondent filed a written answer to the petition, indicating he lacked sufficient knowledge to admit or deny the allegations against him. In his answer, respondent stated he did "not intend to waive any jurisdictional challenges, due process violation claims[,] and reserves the right to address these in the future."

¶ 11 The adjudicatory hearing commenced on September 3, 2014. The State offered State's Exhibit 4, certified records regarding respondent from the Human Service Center (HSC), as evidence. Tab 1 of State's Exhibit 4, was a November 27, 2012, integrated assessment of respondent that documented respondent had P.T.S.D.,[1] hypervigilance, depression, anger issues

[1] Post-traumatic Stress Disorder.

since childhood, and it indicated, "[s]everity is moderate." Respondent's diagnosis was listed as "[m]ajor depressive disorder, recurrent, moderate."

¶ 12 Tab 2 of State's Exhibit 4, included the December 6, 2012, initial psychiatric evaluation of respondent. This evaluation noted respondent had a history of depression, P.T.S.D, paranoia, mood swings, racing thoughts, and anxiety. The diagnostic impression specified that respondent had: "depressive disorder not otherwise specified, R/O P.T.S.D.;" "R/O antisocial personality disorder;" and "long-standing mental illness." The treatment plan showed the doctor prescribed Risperdal, an antipsychotic and mood stabilizer to address respondent's temper and paranoia.

¶ 13 Tab 3 of State's Exhibit 4 was an integrated assessment dated June 18, 2014. This assessment noted respondent reported symptoms of depression following the loss of custody of L.H.-S. According to this assessment, since 2012 respondent had been receiving medications only mental health treatment from HSC, and he previously received treatment at the Center for Human Services in Bloomington, Illinois. Respondent's diagnosis was listed as, "moderate recurrent major depression." The assessment shows respondent was admitted to Mental Health Court on June 18, 2014, and it states that respondent was "appropriate for mental health treatment."

¶ 14 The trial court overruled respondent's objection to State's Exhibit 4 based on hearsay. The court found the records were admissible based on a statutory exception to the hearsay rule. See 705 ILCS 405/2-18(4)(a) (West 2014).

¶ 15 Pursuant to a stipulation between the parties, the State offered, and the court admitted into evidence, certified copies of respondent's criminal convictions from Peoria County case No. 05-CF-218 – (deceptive practices); Peoria case No. 06-CF-1620 – (theft); McLean County case No. 02-CF-513 – (intimidation and DUI); and McLean County case No. 91-CF-881 – (unlawful

possession of a weapon by a felon). These documents revealed that respondent pled guilty in 2007 to Peoria County case No. 05-CF-218 (deceptive practices) and the trial court found respondent guilty, but mentally ill. Defendant was also found guilty but mentally ill concerning a theft charge in Peoria County case. No. 06-CF-1620. The court also received a certified copy of conviction from McLean County case No. 91-CF-881 for unlawful possession of a weapon by a felon involving defendant's possession of .22 caliber ammunition. His predicate felony conviction was felony sexual assault in the state of Texas.

¶ 16 Respondent testified at the adjudicatory hearing that he was the father of L.H.-S. Respondent acknowledged he previously received mental health treatment as an adult. He advised the court that his treatment did not include any conditions prohibiting him from raising his child. During cross-examination, respondent agreed that he was referred to the Mental Health Court in 2014, but the case was eventually dismissed.

¶ 17 The trial court found the State's evidence proved, by a preponderance of the evidence, the allegations pertaining to respondent's prior criminal history and mental illness. Based on this finding, the court determined that L.H.-S. was neglected and respondent contributed to the injurious environment resulting in neglect.

¶ 18 The trial court conducted a dispositional hearing on October 1, 2014. The trial court noted that it possessed a dispositional hearing report recorded (and filed) on September 24, 2014, with attachments, and copies of police reports from the Peoria County State's Attorney's Office.

¶ 19 An entry in the dispositional report stated, "04/08/14 – Shelter Care: Parents were hiding [L.H.-S.]" The report noted, "[t]he investigator, Steve Sizemore, attempted to contact/and locate the parents about 40 times from 03/29/14-05/16/14." The integrated assessment attached to the

dispositional report also documented that respondent was arrested for resisting a peace officer in McLean County on June 5, 2014, "(when [L.H.-S.] was found)."

¶ 20 A police report for June 8, 2014, shows respondent was arrested at his Folkers Avenue address in Peoria after Mother reported that he locked her out of the house and threatened to kill her, and he barricaded himself in the residence. The dispositional report and police reports show that on June 8, 2014, respondent injured a police officer when the officer attempted to arrest him, and respondent then engaged in a three-hour standoff with police at his residence in Peoria. Respondent was arrested for an assault against the minor's mother, resisting/obstructing a peace officer, fleeing arrest, aggravated battery of a police officer, and aggravated assault for threatening to kill police officers.

¶ 21 Jessica Cargill (Cargill), the caseworker from the Center for Youth and Family Solutions, testified on behalf of respondent and stated respondent was currently taking his medications as prescribed. Cargill said that because the HSC records only indicated that respondent had a mental illness, Cargill believed a psychological evaluation would provide more complete information and would clarify respondent's mental health diagnoses. Cargill recommended that respondent participate in a domestic violence assessment. Cargill said respondent previously completed a parenting class with Crittenton Center, but she would refer him to the Nurturing Parenting Class, an in depth 12-week course, through her agency, CYFS.

¶ 22 Cargill said respondent had weekly visits with L.H.-S. Cargill believed respondent's parenting skills were inadequate because respondent spoke to the then 21-month-old L.H.-S. as if she were a three-year-old and tried to show L.H.-S. how to use a plastic butter knife to cut fruit.

¶ 23 Cargill testified that L.H.-S. was present during respondent's McLean County arrest for resisting a peace officer on June 5, 2014, and that three days later respondent was arrested in

Peoria, also for resisting a peace officer. Cargill testified respondent had a pending charge for resisting arrest in McLean County on June 5, 2014, but she was unaware whether respondent had charges pending against him based on his June 8, 2014, arrest in Peoria.

¶ 24 In the written dispositional order filed on October 1, 2014, the trial court found respondent unfit based on mental illness, criminality, and erratic behavior. Respondent filed a timely notice of appeal.

¶ 25 ANALYSIS

¶ 26 Respondent raises three issues on appeal. Respondent contends he was not properly served with notice and did not voluntarily submit to the personal jurisdiction of the juvenile court in this case. Alternatively, respondent contends the trial court failed to specify respondent's acts or omissions which contributed to the injurious environment. In addition, respondent challenges the trial court's finding that respondent was dispositionally unfit.

¶ 27 We first consider whether the trial court had personal jurisdiction over respondent. The issue of whether a trial court has personal jurisdiction over a party is a question of law we review *de novo*. *In re Dar. C.*, 2011 IL 111083, ¶ 60. If a trial court lacks personal jurisdiction over a party, any order entered as to that party is void *ab initio* and may be attacked at any time. *In re M.W.*, 232 Ill. 2d 408, 414 (2009).

¶ 28 Respondent asserts the service by publication in this case did not comply with section 2-207 of the Code of Civil Procedure (735 ILCS 5/2-207 (West 2014)), and was therefore defective. 705 ILCS 405/2-16 governs service by publication for proceedings under the Juvenile Court Act (the Act) and service by publication was proper in this case.

¶ 29 The record shows that diligent, but unsuccessful, attempts were made to serve respondent personally at two different addresses, as provided for in section 2-15 (705 ILCS 405/2-15 (West

2014)), and respondent's current address could not be located to serve him by certified U.S. mail, as provided for in section 2-16 (705 ILCS 405/2-16(1) (West 2014)). The record shows that respondent attempted to conceal the whereabouts of himself and the minor. Thus, service by publication under section 2-16(2) (705 ILCS 405/2-16(2) (West 2014)), was the appropriate course of action to serve notice on respondent.

¶ 30 The record shows the State filed an affidavit for service by publication on April 25, 2014, which shows that diligent inquiries had been made to locate respondent through five different sources, respondent could not be located, and process could not be served on him personally or by certified mail at the Folkers Avenue and N.E. Jefferson Avenue addresses known for respondent. Thus, the affidavit met the requirements of section 2-16(2).

¶ 31 On May 7, 2014, a certificate of publication was filed showing that notice by publication, which met the format detailed in section 2-16(2), had been completed. On May 22, 2014, the trial court found it had jurisdiction over respondent through service by publication.

¶ 32 We conclude the trial court properly obtained personal jurisdiction over respondent pursuant to service by publication as determined by the trial court on May 22, 2014. We recognize defendant was in custody when he appeared before the court in June 2014, after the trial court obtained personal jurisdiction over defendant by publication. Therefore, we will not address respondent's arguments regarding his compulsory personal appearances while in custody.

¶ 33 Next, respondent argues the records from the Human Service Center (HSC) contain hearsay and were not admissible as documents made during the regular course of business by a public or private agency under the exception to the hearsay rule set out in section 2-18(4) of the Act. 705 ILCS 405/2-18(4)(a) (West 2014). The State argues that this court has previously

considered whether documents that were certified to have been made during the regular course of business by the very same agency, HSC, were admissible under section 2-18(4) of the Act. A trial court's ruling on the admissibility of evidence in an adjudicatory hearing is reviewed under the abuse of discretion standard. *In re A.W., Jr.*, 231 Ill. 2d 241, 256 (2008). Section 2-18(4)(a) states:

> "Any writing, record, photograph or x-ray of any hospital or *public or private agency*, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter." (Emphasis added.)
>
> 705 ILCS 405/2-18(4)(a) (eff. Jan. 25, 2013).

¶ 34 In *In re A.S.*, 2014 IL App (3d) 140060, this court held that health records properly certified as having been made as part of the regular course of the agency, HSC, are admissible under section 2-18(4)(a). *Id.* at ¶¶ 30-32. In this case, respondent does not challenge the certification of the HSC records at issue, which both the president and an authorized agent of HSC certified. Thus, based on the holding in *A.S.*, and the language of the Act, we conclude respondent's certified mental health records from HSC, satisfied the requirements of section 2-18(4) of the Act. Therefore, we conclude the trial court properly overruled respondent's objection to this exhibit.

¶ 35 Defendant also challenges the adjudicatory order on the grounds that the trial court failed to specify the acts or omissions attributable solely to respondent that contributed to the court's finding that the minor was neglected. The State responds the trial court properly specified the basis for the finding of neglect. Section 2-21 provides as follows:

> "If the court finds that the minor is abused, neglected, or dependent, the court shall then determine and put in writing the factual basis supporting that determination, and specify, *to the extent possible*, the acts or omissions or both of each parent, guardian, or legal custodian that form the basis of the court's findings. That finding shall appear in the order of the court." (Emphasis added.)
>
> 705 ILCS 405/2-21(1) (West 2014).

¶ 36 The language of the Act shows a court does not have to assign the proportion of blame for neglecting a child to one or both parents. In this case, the court found L.H.-S. was neglected, based on the admission into evidence of respondent's criminal and mental health records.

¶ 37 After carefully reviewing the record, we conclude the information contained in the certified copies of defendant's prior criminal convictions, the previous findings of guilty but mentally ill, and defendant's erratic conduct, as noted by the trial court in the written adjudicatory order, was sufficiently detailed to meet the requirements of section 2-21(1). We affirm the trial court's written adjudication order finding the State proved the allegations of the petition by a preponderance of the evidence and established L.H.-S. to be a neglected minor due to an injurious environment.

¶ 38 Finally, respondent asserts the trial court's determination that respondent is an unfit parent was against the manifest weight of the evidence. Respondent argues there is no connection between his certified criminal convictions and his parenting ability.

¶ 39 A reviewing court will reverse a trial court's dispositional order on two bases only: where the court's findings of fact are against the manifest weight of the evidence; or where the trial court selected an inappropriate dispositional order and thereby committed an abuse of discretion. *In re M.M.*, 2015 IL App (3d) 130856, ¶ 11. A trial court's factual finding is against the manifest weight of the evidence only if the record clearly shows the proper result was the reverse of that reached by the trial court. *In re A.T.*, 2015 IL App (3d) 140372, ¶ 13.

¶ 40 Contrary to defendant's argument on appeal, the case law provides that a finding of unfitness may be based on a respondent's criminal history alone. See *In re S.D.*, 2011 IL App (3d) 110184, ¶ 30; *In re B.C.*, 247 Ill. App. 3d 803, 805 (1993) (abrogated on other grounds by *In re Precious W.*, 333 Ill. App. 3d 893, 901-02 (2002)). However, in this case, respondent's history of prior criminal convictions was not the sole basis for the trial court's determination that respondent was unfit. Here, the criminal history was intertwined with findings that respondent was guilty but mentally ill and his 2014 arrests after the State initiated this juvenile petition were based on very erratic behavior.

¶ 41 We note, the minor, L.H.-S., was with respondent at the time of respondent's June 5, 2014 arrest for resisting a peace officer. On June 8, 2014, respondent was again arrested for resisting a peace officer after purportedly assaulting and threatening to kill the minor's mother, locking her out of the Folkers Avenue residence, physically injuring and threatening to kill police officers, and barricading himself in the house on Folkers Avenue. The trial court received evidence that respondent exhibited signs of mental illness on June 8, 2014, such that the legal authorities determined respondent could be a danger to others if not taken into custody on that date.

¶ 42 Based on this record, the trial court's finding that respondent is an unfit parent was not against the manifest weight of the evidence.

¶ 43 CONCLUSION

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

¶ 45 Affirmed.