

NOTICE

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2015 IL App (4th) 140901-U

NO. 4-14-0901

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 9, 2015

Carla Bender

4th District Appellate

Court, IL

In re: L.S., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 13JA63
HEATHER SCOTT,)	
Respondent-Appellant.)	Honorable
)	Matthew Maurer,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by denying respondent's motion to vacate its adjudicatory order where respondent did not even mention a psychosexual evaluation of her paramour until weeks after the adjudicatory order and then failed to provide the court with the complete evaluation at the hearing on her motion to vacate.

¶ 2 In May 2013, the State filed a petition for adjudication of wardship as to L.S. (born in 2008), the child of respondent, Heather Scott. After a May 2014 adjudicatory hearing, the Sangamon County circuit court found the minor child was neglected. In July 2014, respondent filed a motion to vacate the court's May 2014 adjudicatory order. At a September 2014 hearing, the court denied respondent's motion to vacate and held the dispositional hearing. At the conclusion of the dispositional hearing, the court made the minor child a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

¶ 3 Respondent appeals, contending the trial court erred by denying her motion to

vacate the May 2014 adjudicatory order. We affirm.

¶ 4

I. BACKGROUND

¶ 5

The May 1, 2013, petition for adjudication of wardship alleged L.S. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)), in that her environment was injurious to her welfare because (1) respondent had mental-health issues and (2) L.S. was at a substantial risk of being sexually abused, as evidenced by the fact respondent's paramour, Richard Hashman II, was a registered sex offender.

¶ 6

On May 28, 2014, the trial court held the adjudicatory hearing. The hearing was scheduled for 10:30 a.m., but the court continued it to 1:30 p.m. to allow more time for respondent to get to court. At 1:30 p.m., respondent was again not present. Her DCFS caseworker, Linda Jones, noted respondent, who lived in Riverton, Illinois, called DCFS at 1 p.m. and asked for a ride to court. Since court was at 1:30 p.m., Jones did not try to get to Riverton to get respondent. Respondent's counsel asked for a continuance, which the court denied.

¶ 7

At the adjudicatory hearing, the State proceeded only on the risk-of-sexual-abuse allegation and presented the testimony of Deborah Clifton-Kemp, a DCFS child-protective investigator. On April 18, 2013, Clifton-Kemp received the investigation of L.S., who was the daughter of respondent and Patrick Scott, who is not a party to this appeal. The allegations that led to the investigation were that L.S. was living with respondent, who was using illegal substances, not treating her mental illnesses, and exposing L.S. to sexually deviant people. Clifton-Kemp located respondent and L.S. living in an unfinished basement with Hashman, a convicted and registered child sex offender. Hashman informed Clifton-Kemp he was a

registered sex offender. Clifton-Kemp talked to respondent about having L.S. living in a home with a registered sex offender and was trying to convince her to complete a safety plan, when Hashman and respondent removed Clifton-Kemp from the home. The police came and stopped respondent and Hashman from leaving the home with L.S. The court found L.S. was neglected based on the risk of sexual abuse due to respondent living with a registered sex offender. The court set the dispositional hearing for July 24, 2014.

¶ 8 On July 24, 2014, under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), respondent filed a motion to vacate the trial court's May 2014 adjudicatory order and to continue the dispositional hearing. The motion asserted that, in May 2014, respondent and Hashman lacked the funds to obtain a sex-offender assessment and a psychosexual evaluation that would ascertain whether Hashman still posed a risk as a sexual offender. On July 22, 2014, respondent's attorney learned from respondent the preliminary results of the psychosexual evaluation by Terry Campbell were available and showed Hashman was at a low risk to reoffend. The motion further noted the entire evaluation was not yet available and the dispositional hearing should be continued. Attached to the motion was a letter from Campbell regarding Hashman. The letter stated Hashman presented for a psychosexual examination on July 16, 2014, and Campbell determined Hashman was "low risk" and did not pose a risk of harm for sexual abuse to any children. The letter also noted a full report would follow. The record on appeal does not contain a full report by Campbell.

¶ 9 Also on July 24, 2014, the trial court continued the dispositional hearing. Thereafter, both DCFS and the State filed written responses to respondent's motion to vacate. Respondent also filed a supporting memorandum.

¶ 10 On September 15, 2014, the trial court held a hearing on respondent's motion to

vacate the court's May 2014 adjudicatory order. At the outset, the court noted section 2-1401 did not apply to respondent's motion to vacate. Since the court had not yet entered a dispositional order, it still had jurisdiction over its adjudicatory order.

¶ 11 At the hearing on the motion, respondent's counsel emphasized the psychosexual evaluation was not done sooner because of respondent's indigency. Counsel noted the evaluation cost \$650 and had to be paid in advance. Respondent was able to obtain the funds because she began receiving disability. Counsel then filed the motion shortly after learning the preliminary results of the evaluation. The State and DCFS argued respondent did not act with due diligence and noted respondent had ample time to raise her lack of funds for an evaluation before the adjudicatory hearing. The guardian *ad litem* believed it was a factual question for the court to decide.

¶ 12 The trial court denied the motion, noting the adjudicatory hearing took place over a year after the wardship petition was filed. It further noted respondent did not show up at the adjudicatory hearing and explain that she was in the process of getting a psychosexual evaluation for Hashman. The court found respondent did not exercise due diligence and the letter was not new evidence as respondent could have obtained the evaluation at any time. Moreover, the court found Campbell's letter would not have changed its ruling at the adjudicatory hearing. Respondent's counsel noted Campbell had completed a full report and the parties had received a copy of it. The court still denied the motion to vacate.

¶ 13 After denying the motion to vacate, the trial court held a dispositional hearing. The State recommended L.S. be made a ward of the court and her custody and guardianship remain with DCFS. Respondent did not object to the State's recommendation. The court concurred with the State and made L.S. a ward of the court and appointed DCFS as her guardian.

¶ 14 On October 15, 2014, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010). See *In re Austin W.*, 214 Ill. 2d 31, 43-44, 823 N.E.2d 572, 580 (2005) (noting "dispositional orders are generally considered 'final' for the purposes of appeal").

¶ 15 II. ANALYSIS

¶ 16 Respondent argues the trial court's denial of her motion to vacate was improper. Respondent does not provide a standard of review and only cites section 2-1401 case law. The State also fails to set forth a standard of review and also only addresses section 2-1401. However, the trial court was correct when it noted section 2-1401 did not apply to respondent's motion to vacate since the dispositional order had not yet been entered. See *In re M.J.*, 314 Ill. App. 3d 649, 654-55, 732 N.E.2d 790, 794-95 (2000) (noting an adjudicatory order is generally not a final and appealable order and the dispositional order generally is the final order from which an appeal properly lies); see also *In re B.H.*, 218 Ill. App. 3d 583, 587, 579 N.E.2d 19, 22 (1991) (noting that, until the dispositional order was entered, the trial court continued to have jurisdiction to hear the respondents' motion to vacate the adjudicatory order). In this case, respondent's motion to vacate was akin to a motion to reconsider. See *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 280, 904 N.E.2d 1102, 1111 (2009) (with a motion to reconsider, a party seeks the trial court's review of its prior ruling based on, *inter alia*, newly discovered evidence).

¶ 17 This court reviews a trial court's denial of a general motion to vacate for an abuse

of discretion, and thus we consider whether the ruling was a fair and just result, and not a denial of substantial justice. *J.P. Morgan Mortgage Acquisition Corp. v. Straus*, 2012 IL App (1st) 112401, ¶ 14, 980 N.E.2d 702. As the moving party, respondent bore the burden of establishing sufficient grounds for vacating the trial court's adjudicatory order. See *J.P. Morgan*, 2012 IL App (1st) 112401, ¶ 14, 980 N.E.2d 702. A trial court abuses its discretion only "if no reasonable person would take the view adopted by the trial court." *J.P. Morgan*, 2012 IL App (1st) 112401, ¶ 14, 980 N.E.2d 702. Additionally, we note a motion to reconsider does not permit parties to raise new legal theories or factual arguments. *River Plaza*, 389 Ill. App. 3d at 280, 904 N.E.2d at 1111. "Trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling." (Internal quotation marks omitted.) *River Plaza*, 389 Ill. App. 3d at 280, 904 N.E.2d at 1111 (quoting *North River Insurance Co. v. Grinnell Mutual Reinsurance Co.*, 369 Ill. App. 3d 563, 572, 860 N.E.2d 460, 468-69 (2006)). Last, to justify setting aside a prior order based on newly discovered evidence, the moving party must show the following: (1) due diligence in discovering the evidence, (2) he or she could not have produced the evidence at the first trial by exercising due diligence, (3) the evidence is so conclusive it would probably change the order's result, (4) the evidence is material and relates to the issues, and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409-10, 822 N.E.2d 596, 603 (2005).

¶ 18 Here, respondent had over a year to get a psychosexual evaluation for the adjudicatory hearing. Even if she could not afford the evaluation until July 2014, respondent failed to appear at the adjudicatory hearing, and her counsel did not mention respondent's desire to obtain a psychosexual evaluation for Hashman at the hearing. Moreover, no other evidence or

argument was presented that Hashman did not pose a risk of sexual abuse to L.S. Thus, respondent failed to raise any challenge to the State's neglect allegation at the adjudicatory hearing, received an unfavorable adjudicatory order, and then gathered evidence to refute the court's order. Such action is unacceptable and not a basis for vacating the court's adjudicatory order. See *River Plaza*, 389 Ill. App. 3d at 280, 904 N.E.2d at 1111. Additionally, at the hearing on the motion to vacate, respondent failed to provide the trial court with the complete report for Hashman's psychosexual evaluation. Thus, respondent also failed to show the evidence was so conclusive it would probably change the adjudicatory order's result.

¶ 19 Accordingly, we find the trial court did not abuse its discretion by denying respondent's motion to vacate.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 22 Affirmed.