

NOTICE

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2015 IL App (4th) 150390-U

NO. 4-15-0390

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 8, 2015

Carla Bender

4th District Appellate

Court, IL

In re: P.C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA6
KATIE PARTRIDGE,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision finding respondent mother unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline her child is against the manifest weight of the evidence.

¶ 2 Respondent mother, Katie Partridge, appeals the order finding her unfit or unable to parent her child P.C. (born February 23, 2012) and granting custody and guardianship of P.C. to the Department of Children and Family Services (DCFS). Partridge argues the order is against the manifest weight of the evidence. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 In January 2015, the State filed a petition for adjudication of neglect on P.C.'s behalf. The State identified Mark Carlson as P.C.'s father. Carlson is not a party to this appeal. The State alleged two counts of neglect, asserting P.C.'s environment was injurious to her

welfare when she resided with Partridge or Carlson in that she was exposed to domestic violence (count I) and the risk of physical harm (count II) (705 ILCS 405/2-3(1)(b) (West 2014)).

¶ 5 At the March 2015 adjudicatory hearing, Partridge admitted the allegations in count I. The trial court found a factual basis for the admission, relying in part on three police reports of domestic violence involving Partridge and Carlson from 2011 to 2014. After the first incident, neither party was arrested. Carlson was arrested for the domestic battery of Partridge after the latter two incidents, incidents in which P.C. was present.

¶ 6 In April 2015, an adjudicatory hearing was held as to the allegations involving Carlson. The police officers involved in the above domestic disputes testified, as did two DCFS investigators.

¶ 7 Timothy Atteberry, a patrolman for the Champaign police department, testified he investigated a domestic dispute between Partridge and Carlson in February 2013. Officer Atteberry was dispatched to an emergency room, where he spoke with Partridge. Partridge reported she and Carlson had been dating for four years and had a one-year-old daughter. The three resided together. The domestic incident occurred when, after a night of drinking, Carlson returned home at 5 a.m. Partridge and Carlson argued in the living room over his late night. P.C. was asleep in the same room. While they argued, Carlson hit Partridge three or four times. Partridge suffered two lumps on her head. Partridge reported there had been several incidents of domestic disputes in the past. Officer Atteberry provided Partridge with a written domestic-violence form that set forth Partridge's rights and resources for obtaining an order of protection. Partridge told Officer Atteberry she did not wish to press charges. Officer Atteberry told Partridge he noted her preference, but policy required prosecution be pursued.

¶ 8 Officer Atteberry testified he observed no marks or injuries on P.C. P.C. appeared to be in perfect health. Officer Atteberry found Carlson sleeping in a bedroom next to the living room. Carlson informed Officer Atteberry of the argument but stated Partridge hit him and, in defense, he pushed her, causing Partridge to fall over a couch. Eventually, Carlson admitted hitting Partridge. Carlson told Officer Atteberry Partridge used cannabis and hallucinogens.

¶ 9 Douglas Wendt, a Champaign police officer, testified he, in January 2011, responded to a domestic dispute involving Partridge and Carlson. According to Officer Wendt, Partridge reported she and Carlson had been in a relationship for three years. Partridge and Carlson were in an argument when, Partridge reported, Carlson pushed her down and slapped her face. Officer Wendt observed no injuries on Partridge. Officer Wendt provided Partridge with a form involving domestic violence. Partridge indicated she did not want to press charges. Carlson denied pushing or slapping Partridge. Partridge wanted to leave the residence. Officer Wendt stayed until she left.

¶ 10 Norman J. Meeker, a deputy with the Champaign County sheriff's department, testified he responded to a domestic dispute involving Partridge and Carlson in November 2014. Deputy Meeker reported one deputy met Partridge and P.C. at a gas station, while he went to the residence where the dispute occurred. When Deputy Meeker arrived, Carlson was standing next to the road. Carlson had a strong odor of alcohol on his breath. His speech was slurred, and he repeated himself. Deputy Meeker asked Carlson if he had been drinking. Carlson replied he had not had a drink in a couple of hours.

¶ 11 Deputy Meeker testified Carlson was concerned about P.C. because Partridge was

angry when she left. Carlson stated Partridge became angered when he would not allow P.C. to drink orange juice at 1 a.m. When Deputy Meeker asked Carlson if he had made any physical contact with Partridge, Carlson "reached over and grabbed a bible ***, put it on his lap and said that he had made peace with that." Deputy Meeker asked Carlson to explain, but he would not. Carlson did not answer the question despite repeated attempts by Deputy Meeker. Carlson was arrested. Carlson had a cut on the back of his right hand, which he stated occurred at work.

¶ 12 Robert Hubbard, a deputy sheriff with the Champaign County sheriff's department, testified regarding the November 2014 domestic dispute. Deputy Hubbard met with Partridge at the gas station. P.C. was present. Partridge reported Carlson punched and slapped her face and kicked her in the buttocks. Partridge took P.C., left the house, and called the police. Carlson attempted to stop her by blocking the exit and by attempting to take P.C. from Partridge's arms. Deputy Hubbard observed a few marks and some bruising on Partridge. P.C. had no visible injuries. When Carlson was searched after his arrest, officers found drug paraphernalia, a pipe, on Carlson. Carlson denied battering Partridge.

¶ 13 Barbara Traylor, a child-protection advanced specialist with DCFS, testified she was assigned to investigate an incident of domestic violence between Carlson and Partridge. Carlson reported he and Partridge, on April 10, 2014, had an argument that became physical as the two were driving P.C. to day care on Interstate 57. According to Carlson, Partridge was driving. At some point, Partridge began hitting and scratching Carlson. Carlson flicked parts of his egg sandwich at Partridge. P.C. was in the backseat.

¶ 14 Michelle Paisley, a child-protection advanced specialist with DCFS, testified she had spoken with Partridge at least 10 times during her investigation of the November 2014

incident of domestic violence. Partridge told Paisley the couple had a history of domestic violence. Regarding the November 2014 incident, Partridge reported Carlson kicked her buttocks and punched her arm. As she tried to leave, Carlson attempted to block her. Partridge screamed for Carlson's sister to call 9-1-1. Carlson covered Partridge's mouth to quiet her. As of November 2014, Partridge and Carlson were not living together, but Partridge reported spending a few nights a week at his home. Paisley opined P.C. was very bonded to Partridge. P.C. did not have any scars or bruises that raised concern.

¶ 15 During her investigation, Paisley also spoke with Carlson multiple times. Carlson acknowledged a history of domestic violence. Carlson denied attempting to harm Partridge during the November 2014 incident.

¶ 16 The trial court found the State met its burden of proof on both grounds as to Carlson.

¶ 17 The dispositional hearing was held on April 30, 2015. At the hearing, the trial court noted it had considered the April 10, 2015, home and background report prepared by the Center for Youth and Family Services (CYFS), as well as the addendum. CYFS reported the family had a previous intact case during which services were not completed. Both parents had issues regarding domestic violence and substance abuse.

¶ 18 Regarding Partridge, CYFS reported Partridge had above-average intelligence and understood the reasons for DCFS involvement. Partridge reported her relationship with Carlson "had its ups and downs." Partridge was generally the aggressor as the arguments were due to Carlson's behaviors, which included drinking and staying out late. Partridge admitted hitting Carlson a handful of times. The two were taking a "time out on their relationship to sort things

out" in the best interests of their daughter. Partridge wanted her relationship with Carslon to work, but she did not know if that was possible. Partridge graduated from high school in 2003 as an honor student. She earned an associate's degree in 2005 and took another year of early-education classes. Partridge and P.C. resided in Rantoul at Partridge's mother's home, in which Partridge's mother has lived for 40 years. Partridge paid no rent. She worked at Fast Signs in Champaign, earning \$11.25 an hour and working more than 25 hours per week. She received assistance for day care and medical care.

¶ 19 In the report, CYFS stated Partridge had a history of substance abuse and reported her last usage in the previous month. She agreed substance-abuse treatment was necessary to overcome her addiction. Partridge believed cannabis use was "ok" as "it did not have the same influencing effects as alcohol and other drugs."

¶ 20 CYFS further reported regarding the services in which Partridge participated. Partridge attended 12 of 13 sessions for domestic-violence counseling at Cognition Works. She missed one due to medical reasons. At these group sessions, Partridge was willing to share her thoughts and she exhibited a cooperative attitude. Partridge consistently and engagingly attended counseling through the Bridging the Gap program. Regarding substance-abuse treatment, there was no report of missed sessions. As of the date of the report, Partridge attended 16 individual sessions, 4 sessions of "Managing Feelings," 6 sessions of "Early Recovery," and 26 sessions of "Relapse Prevention." All random drug screens were clean. Partridge complied with the daily call-in schedule. Regarding substance-abuse treatment, DCFS reported Partridge had "done an excellent job working on her treatment goals." Of the parenting classes, Partridge attended 9 of 10 and successfully completed the program. Her scores were high, indicating a

"low risk for abuse and neglect" and a "nurturing parenting philosophy."

¶ 21 According to CYFS, Partridge's interaction with P.C. was positive. Partridge used age-appropriate parenting skills and engaged in positive conversation. Partridge used appropriate disciplinary techniques as needed.

¶ 22 At the close of the report, CYFS recommended custody and guardianship of P.C. be removed from Partridge and Carlson and granted to DCFS.

¶ 23 At the hearing, Partridge testified P.C. has attended day care at the First United Methodist Church in Champaign for two years. Partridge would take P.C. on her way to work. P.C. did very well. If P.C. were removed from Partridge's care, she would not be able to attend that day care. Regarding the initial case with DCFS, Partridge testified, shortly after she began intact services, DCFS called and closed the case. Partridge was told there were more important cases and her referrals were cancelled. In April 2014, DCFS became involved again but did not offer services.

¶ 24 Partridge reported her last marijuana use was in October 2014. The CYFS report's reference to use in the previous month, according to Partridge, referenced a statement she made in November 2014. Partridge began counseling sessions at her own expense before the referral. She also paid for the report provided by her counselor with Elliott Counseling. The counselor opined Partridge had "a willing spirit to do whatever necessary to keep her daughter in her custody and out of harm[']s way." Partridge reported no contact with Carlson as directed.

¶ 25 Partridge testified P.C. was doing well despite earlier separation issues due to not seeing Carlson regularly.

¶ 26 Alisia Redding, an intact-family caseworker at CYFS, testified she prepared the

CYFS report. Redding testified her supervisor recommended DCFS have custody because of the history of domestic-violence reports. Redding observed P.C. in Partridge's care on a weekly basis since January 2015. Redding had no concerns about P.C. being in her mother's care. Redding agreed guardianship should be placed with DCFS. When asked about custody, Redding testified as follows:

"I mean, there are significant reasons, as far as when I discussed it with my supervisor, as far as custody. And, the case was transferred to me before—before it had opened up, so I got the case in January. So, there are other reasons, as far as I had to consult with my—my supervisor, as far as the reasonings, as far as the significant domestic violence reports that's on file."

¶ 27 The trial court found Partridge unfit and unable to parent P.C. The court placed custody and guardianship of P.C. with DCFS.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A dispositional hearing follows a finding of neglect. *In re A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)). At the dispositional hearing, a trial court determines where to place custody and guardianship of the child, with options that include placing the child with a parent or with DCFS. See 705 ILCS 405/2-23(1)(a) (West 2014). Before a court may grant custody and guardianship to DCFS, a trial court must find (1) the parents are "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and [(2)] the health,

safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1)(d) (West 2014). On appeal, this court will overturn a dispositional order if the findings of fact are against the manifest weight of the evidence or the court abused its discretion in selecting an improper dispositional order. *In re Ta. A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1037-38 (2008).

¶ 31 Partridge contends the trial court erred in finding her unfit and unable to care for P.C. In support, Partridge initially points to the trial court's order as proof of this error, as the court, in ruling against her, relied on findings it made at a temporary-custody hearing that did not occur and at the adjudicatory hearing, which involved allegations against Carlson because Partridge admitted neglect. Partridge emphasizes the evidence shows her efforts at complying with services and the testimony of the CYFS caseworker who opined she had no concerns about P.C.'s well-being while in Partridge's care.

¶ 32 We agree with Partridge. There was a history of domestic violence between Partridge and Carlson, but the evidence in this case shows the finding Partridge is unfit or unable to parent P.C. is against the manifest weight of the evidence. Since DCFS involvement in this case, Partridge has proved her willingness to comply with services to protect her child. Partridge completed the parenting course with high marks, indicating P.C. would be at low risk of abuse and neglect and would reside in a nurturing environment while in Partridge's care. Partridge consistently attended and actively participated in domestic-violence counseling. She also complied with substance-abuse services. While the CYFS report indicated Partridge used marijuana in March 2015, that report is contradicted by Partridge's convincing explanation and by the negative drops in repeated drug screens. Throughout services, Partridge's attitude was

cooperative. In addition, what is noticeably absent is evidence of any inappropriate contact or attempts to contact Carlson. There is also no testimony or report by a therapist showing concern Partridge would continue an inappropriate relationship with Carlson.

¶ 33 We further note DCFS made no effort to remove P.C. from Partridge's custody in January 2015. From the time services began, through the time Partridge complied with those services, until the dispositional hearing, P.C. remained with Partridge. Moreover, Redding's testimony shows she, the author of the CYFS report, did not believe P.C. was unsafe in her mother's care. Redding, who observed Partridge interact with P.C. on a weekly basis over three months, opined guardianship should remain with DCFS but could not clearly state why custody should be given to DCFS. Instead, that opinion came from Redding's supervisor, who did not testify.

¶ 34 The State's case, *In re K.R.*, 356 Ill. App. 3d 517, 827 N.E.2d 535 (2005), is distinguishable. In *K.R.*, the respondent mother covered up the abuse of herself and her child, partially complied with drug drops, and failed to take responsibility to eliminate drugs and domestic violence from her life. *Id.* at 522-23, 827 N.E.2d at 540-41. The same facts do not exist here.

¶ 35 In these circumstances, the finding Partridge was unfit or unable to parent P.C. is against the manifest weight of the evidence. The trial court abused its discretion in placing custody of P.C. with DCFS.

¶ 36 III. CONCLUSION

¶ 37 We reverse the trial court's dispositional order and remand for further proceedings.

¶ 38

Reversed and remanded.