

NOTICE

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2015 IL App (4th) 150462-U

NO. 4-15-0462

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 4, 2015
Carla Bender
4th District Appellate
Court, IL

In re: E.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA16
LISA JOHNSON,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justice Holder White concurred in the judgment.
Justice Appleton dissented.

ORDER

¶ 1 *Held:* The trial court did not err in finding respondent mother unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline her child.

¶ 2 Respondent mother, Lisa Johnson, appeals the order finding her unfit or unable to parent her child, E.W. (born December 29, 2013), and granting custody of E.W. to the Department of Children and Family Services (DCFS). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2015, the State petitioned for an adjudication of neglect on behalf of E.W. Gary J. Williams is E.W.'s father and not a party to this appeal. Johnson and Williams were not married. In the petition, the State alleged three counts of neglect, asserting E.W.'s

environment was injurious to his welfare when residing with Johnson or Williams in that he was exposed to domestic violence (count I) and substance abuse (count II) (705 ILCS 405/2-3(1)(b) (West 2014)). Count III asserted neglect when E.W. resided with Williams in that Williams failed to correct the conditions that resulted in a prior adjudication of parental unfitness as to E.W.'s half-sibling, G.W.

¶ 5 In May 2015, at the adjudicatory hearing, Johnson admitted the allegations in count I. According to the factual basis for her stipulation, in July 2014, police were called to the residence of Johnson and Williams. Police spoke to an independent witness as well. Johnson had been drinking. Williams and Johnson began arguing. Johnson struck Williams in the face. E.W. was not present for this incident of domestic violence. In January 2015, the police were called to another domestic-violence incident. Johnson again struck Williams. Williams had some superficial injuries to his face and chest. His shirt was ripped. E.W. was in the residence. The trial court accepted Johnson's stipulation.

¶ 6 The dispositional hearing was held on June 1, 2015. The parties did not present witness testimony. The trial court relied on the home and background report prepared by the Center for Youth and Family Services (CYFS).

¶ 7 According to its report, the January 2015 incident of domestic violence involved an intoxicated Johnson. Williams grabbed Johnson and pushed her to the ground. He kicked Johnson in the head. Johnson had bumps and bruises. Williams was arrested for domestic violence. Williams' shirt was ripped, and Johnson had poured a liquid on him. Johnson did not seek medical attention. She remained in the home with E.W. After the July 2014 incident, Johnson was arrested. Williams was charged for domestic battery on January 2015 and for

violating his bail bond on February 19, 2015. A no-contact order was issued on January 17, 2015, between Johnson and Williams. It remains in effect.

¶ 8 CYFS reported Johnson, born in 1989, worked various jobs starting at age 16. Johnson was, at the time, employed full-time with Sprint, earning \$9 per hour. Johnson and E.W. had a medical card. Johnson received Link benefits of \$435 per month and E.W. received WIC benefits. Johnson moved into a two-bedroom and one-bathroom apartment to be independent of Williams and to safeguard herself and E.W. Johnson's relationship with Williams began three years before. It had "its ups and downs." Johnson admitted "a few disputes" with Williams.

¶ 9 Because of her relationship with Williams, Johnson was party to an active juvenile-abuse case involving Williams' daughter, G.W. As a member of the case, Johnson was recommended to participate in domestic-violence education and a substance-abuse evaluation. Johnson refused to participate in those services. Regarding E.W.'s case, Johnson was scheduled to begin domestic-violence education and to participate in a substance-abuse evaluation in June 2015. Johnson completed a random drug screen at the end of May 2015. The results were pending.

¶ 10 Williams was incarcerated at the county jail. His anticipated release date was June 20, 2015. In the family service plan for his daughter, G.W., Williams successfully completed parenting education but declined to complete a domestic-violence assessment and further domestic-violence services. Williams was noncompliant in that case. On February 19, 2015, the Champaign police department responded to a call of a domestic dispute. Johnson told police Williams was not in the home. The police, however, found Williams hiding in a closet in

the home. Williams violated the no-contact order and he was arrested. Neither Williams nor Johnson reported the incident to the agency.

¶ 11 According to the report, E.W. was "very social and energetic." E.W. was "very bonded" with Johnson and listened well to directions. E.W. was current on child examinations and immunizations. He was on a regular sleep schedule, had a healthy appetite, and slept well nightly. E.W. attended licensed day care while Johnson was at work. CYFS recommended custody of E.W. remain with Johnson, but guardianship should be granted to DCFS.

¶ 12 At the hearing, the guardian *ad litem* and the State argued custody should be removed from Johnson. Both emphasized Johnson's history with Williams, the continued contact with Williams despite the court order, and Johnson's lying to the police. Referencing the continued relationship between Johnson and Williams, the trial court agreed with the State and the guardian *ad litem* and found Johnson unfit and unable to act as a custodial parent. The court granted custody and guardianship to DCFS.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Upon a finding of neglect, a dispositional hearing follows. *In re A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336. At the dispositional hearing, a trial court decides where to place custody and guardianship of the child. Options include placing the child with a parent or with DCFS. See 705 ILCS 405/2-23(1)(a) (West 2014). A court may remove a child from a parent's custody and grant DCFS custody and guardianship of the child only if the court finds the following: (1) the parent is "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 parent's custody. 705 ILCS 405/2-27(1)(d) (West 2014). This court, on review, will not reverse a dispositional order unless 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 J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 16 Johnson argues the trial court improperly focused on the history of her relationship with Williams and not on her ability to parent. Johnson emphasizes E.W. was a healthy, social child, who was current on his medical examinations and immunizations, as well as CYFS's recommendation E.W. remain in her custody. Johnson points to E.W.'s bond with her, the fact she had custody of E.W. since his birth, and her realization she needed to maintain her separation from Williams to protect E.W.

¶ 17 We find no error in the trial court's decision. Domestic violence pervades the relationship between E.W.'s parents. Domestic violence threatens E.W.'s health and well-being and led to the finding of neglect. The record establishes multiple incidents where police were called. During the January 2015 dispute, E.W. was in the home when the domestic violence occurred. Despite this history, DCFS's involvement with Williams' other child, G.W., and the no-contact order following Williams' arrest, Johnson continued to allow Williams into her and E.W.'s life. Johnson lied to the police to protect Williams and did not report the incident to the agency. Despite her statement to the contrary, there is no evidence in the record to establish Johnson yet understands the threat domestic violence imposes on her and her child and no evidence to show Johnson is fit or able to protect E.W. Johnson refused to undertake services recommended in G.W.'s case. In addition, Williams' release from jail was imminent, and

Johnson's prior conduct raises doubts Johnson will keep Williams from her life. Given Johnson's and Williams' history, the trial court did not err in removing custody of E.W. from Johnson.

¶ 18

III. CONCLUSION

¶ 19 We affirm the trial court's judgment.

¶ 20 Affirmed.

¶ 21 JUSTICE APPLETON, dissenting.

¶ 22 Because DCFS allowed respondent to maintain physical custody, subject to its guardianship, the professionals of the department recognized that respondent was a capable parent—subject to a short leash.

¶ 23 There appears to be no evidence that respondent is not a capable parent even though she suffered a stormy relationship with her paramour that had ended, at least, with his incarceration.