2015 IL App (5th) 140544-U

NO. 5-14-0544

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re L.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Effingham County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 12-JA-6
	)	
Matthew S. and Ashley S.,	)	
	)	
Respondents-Appellants	)	
	)	Honorable
(Paul Rogers and Melissa Rogers, Intervenors-Appellees)).	)	James J. Eder, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Cates and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determination that the respondents were unfit, unable or unwilling to care for the minor is not contrary to the manifest weight of the evidence.

¶ 2 The respondents, Matthew S. (Matthew) and Ashley S. (Ashley), appeal from an order of the circuit court of Effingham County finding that neither parent was fit, able or willing to care for L.S. At that time, L.S. was to be made a ward of the court and to remain in substitute care of his foster parents, in the custody and under the guardianship

of the Illinois Department of Children and Family Services (DCFS), pending determination of the State's motion for termination of parental rights, which was filed on June 25, 2014. For the reasons which follow, we affirm.

¶ 3 The respondents have three children together: A.S., born on November 1, 2010, L.S., born on June 9, 2012, and M.S., born on July 11, 2013. On June 9, 2012, shortly after his birth, L.S. was removed by DCFS from the care of the respondents.

¶ 4 On June 13, 2012, the State filed a petition for adjudication of wardship where it alleged that L.S. was a neglected child pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2010)), because Matthew and Ashley had created an environment which was injurious to his welfare. Specifically, the petition alleged that L.S. was neglected due to an injurious environment in that: (1) the respondents had another minor child, A.S., less than 10 months old at the time, removed by DCFS in May 2012, after she suffered unexplained bruising on her face while left alone with Matthew; (2) the respondents had made minimal progress towards service goals that would result in the return home of A.S., and were only in the initial stages of their specified counseling services; (3) approximately five months after A.S. was removed, and four months prior to the birth of L.S., Matthew was arrested and then jailed from February 16, 2012, through March 19, 2012, for two counts of delivery of a controlled substance; (4) Matthew's mental health evaluation in 2012 indicated that he had narcissistic and antisocial personality traits, and did not appear "amenable to treatment"; and (5) Ashley's evaluation in 2012 indicated that she suffered from several disorders, including depression, anxiety, and dependent personality disorder, that she was

"in need of assistance in making healthy decisions for herself and her children," and that "[c]oncerns exist that she will resist assistance and that an unconscious self sabotage personality trait will cause her to not listen." Following a shelter care hearing on June 13, 2012, where both of the respondents consented to the entry of an order for temporary custody, L.S. was placed in temporary custody and guardianship with DCFS.

¶ 5 On June 18, 2012, DCFS prepared a service plan for the respondents and L.S., scheduling visitation for two-hour sessions, twice a week, with the intention to reunify the respondents with L.S.

¶ 6 On May 31, 2013, the circuit court held an adjudicatory hearing. At this hearing, the court took judicial notice of the adjudicatory order entered as to A.S. in case 11-JA-15. In addition, the court took judicial notice of Matthew's long history of drug problems and multiple illegal drug sales in which Ashley failed to remove A.S. and herself, at that time pregnant with L.S., from the home. Evidence at the hearing demonstrated that Matthew had failed to cooperate with DCFS on multiple occasions. Testimony supported DCFS's allegations that he had failed to make adequate progress with his client service plan, particularly in the area of drug counseling. Evidence was presented by Jenny Mosier, Ashley's former Heartland Human Services counselor, that Ashley failed to cooperate with DCFS and had spent a portion of her counseling sessions discussing her frustration with DCFS, rather than addressing her own anxiety and other mental health issues that led to the removal of her children.

¶ 7 On July 31, 2013, the circuit court entered an adjudicatory order finding L.S. was a neglected minor pursuant to section 2-3 of the Act, premised upon the theory of

anticipatory neglect. 705 ILCS 405/2-3 (West 2010). Specifically, the court provided a detailed factual basis supporting its determination, which included concerns regarding Matthew's apparent long history of drug problems. Additionally, the court found that Ashley lacked credibility when she testified she was unaware, until his arrest, that Matthew sold drugs in their home, despite testimony acknowledging that she knew Matthew had abused heroin in the past. Moreover, the alleged abuse and subsequent removal of A.S. when left alone with Matthew was extremely alarming for the court. Furthermore, even after A.S. was removed from the respondents' care, and Matthew was arrested and then indicted for illegally selling drugs, Ashley continued to reside with Matthew. Thus, the court determined that, if not for the prompt removal of L.S., he would have been in an environment injurious to his welfare.

¶ 8 On May 1, 2014, after an extensive negotiation by all parties, agreed dispositional and permanency orders were entered. However, on May 14, 2014, the respondents filed a motion to vacate the dispositional order and requested that the case be reset for a new dispositional hearing. The circuit court granted the respondents' motion and a new dispositional hearing was scheduled.

¶ 9 Over the course of three days, on September 5, 2014, September 8, 2014, and September 11, 2014, the circuit court held a dispositional and a permanency hearing. The State first called Sarah Porter, a DCFS child welfare specialist. Porter testified that she had been involved in the case of L.S. since March 2013. She testified that the goals set out for Ashley were to seek housing, employment, mental health assessments and counseling, as well as parenting classes. Porter testified that her relationship with Ashley

had been difficult. In particular, Ashley moved, without notice, to Chicago, Illinois, which presented an obstacle for visitation with L.S., as well as with maintaining compliance with service providers delineated in Ashley's service plan. Thus, when Ashley moved, this resulted in service gaps, as DCFS tried to find counselors for her in Chicago. Specifically, Porter testified that Ashley sporadically attended counseling sessions and had refused to obtain a bonding assessment between her and L.S., which was a service plan requirement.

¶ 10 Porter also testified that since February 2014, the respondents had missed or cancelled 22 of 37 scheduled visits with L.S. Furthermore, due to distance between Chicago and Effingham, the respondents requested that visitation be reduced from twice a week for two hours, to once a week for four hours. However, eventually, the respondents requested the once-weekly visitation be reduced from four hours to two hours, because they felt that spending four hours in a DCFS-supervised room with their children was "inhumane."

¶ 11 On September 8, 2014, Kari Rogers, the current DCFS caseworker, testified. Rogers testified that visitation initially took place at Matthew and Ashley's apartment, but that in August 2012, the respondents advised DCFS caseworkers that they were no longer welcome in their home. Thus, in order to continue visitation, visitation was moved to DCFS's office in Effingham.

¶ 12 On September 8, 2014, the State called Ashley as their first witness. At the time of the hearing, Ashley lived in Brookfield, Illinois, with her parents and her first-born, C.M., whom she surrendered to the custody of her parents at the age of five, before she

moved to Effingham with Matthew. Ashley's parents are C.M.'s legal guardians. Ashley testified that she was unemployed and had not recently applied for any jobs. She had no source of income. In response to the court's questioning regarding her unemployment status, Ashley claimed that she could not hold a job because she had too many service requirements expected by DCFS. Ashley further testified that her relationship with Matthew was progressing and that they had consistently attended coparenting classes at Forward P.C. in Chicago for several months.

¶ 13 Ashley testified that she filed for dissolution of marriage on grounds of extreme and repeated mental cruelty by Matthew, based on his failures to cooperate with DCFS and to attend required counseling and scheduled visitation with A.S. and L.S. At the time she filed for divorce, Ashley "didn't believe *** that [Matthew] was working in the direction of getting our children back." She further testified that Matthew's conduct indicated to her that he had little, if any, concern for his children's welfare.

¶ 14 At the hearing, Ashley conceded that Matthew was the father of M.S., her fourth child, a fact that she had previously denied at the adjudicatory hearing on May 31, 2013, claiming the child's father was Caleb Akers. In addition, Ashley testified that shortly after she gave birth to M.S., she placed M.S. with her ex-husband's mother, Kristen Adams, later requesting that Mrs. Adams become M.S.'s temporary guardian.

¶ 15 On September 8, 2014, Matthew was called to testify. Matthew testified at the hearing that he was currently unemployed and resided in a homeless shelter in Chicago. When asked by the court as to how Matthew planned to care for L.S. if returned to him, he was unable to provide the court with concrete plans regarding housing, stating, "If I

were to move anywhere else it would be with friends temporarily, which I am actually looking into that possibility right now." Matthew testified that he had no driver's license and relied on Ashley for transportation to and from Effingham to visit his children. He further testified that he chose to be absent in the case for nearly a year, based on the advice of Ashley's attorney, and did this as a "sacrifice" to enhance the likelihood that Ashley would regain custody of their children. Matthew testified that his inability to find steady full-time employment was largely a result of his efforts to fulfill other requirements within his service plan. However, Matthew testified that he had applied to roughly 150-200 jobs, but when asked to state the name of a potential employer, he was unable to do so for the court.

¶ 16 Matthew testified that he believed DCFS was not affording him and Ashley the ability to regain custody of their children, as DCFS, in his opinion, had failed to recognize their progress since the removal of A.S. Matthew testified that he had made significant progress with the issues which led to the removal of his children. In particular, Matthew testified that he had been subject to random drug testing and had been found to be drug-free for the entirety of L.S.'s life. Furthermore, he testified that on his own initiative he had attended psychiatric and other counseling services, suboxone treatment, as well as alcoholism and drug counseling to correct these issues, but that as much as he tried, he did not believe DCFS recognized his efforts.

¶ 17 At the close of the evidence, in which the circuit court heard roughly 15 hours of testimony, all counsel were provided an opportunity to submit their closing arguments in writing.

¶ 18 On October 8, 2014, the circuit court held that the State established by a preponderance of the evidence that neither Matthew nor Ashley was fit, able or willing to care for L.S. at that time. The court determined that it was in the best interest of L.S. to be made a ward of the court and to remain in substitute care, placed with his foster parents, Paul and Melissa Rogers, in the custody and under the guardianship of DCFS, pending the determination of the State's motion for termination of the respondents' parental rights. The respondents appeal.

¶ 19 According to section 2-22(1) of the Act, at a dispositional hearing, the circuit court "shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court" and then, if the minor is made a ward of the court, the court "shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2010). If the minor is made a ward of the court, the court shall then determine the proper disposition of the minor. 705 ILCS 405/2-22(1) (West 2010). If the court determines that a parent, guardian or legal custodian is "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] unwilling to do so," and the best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, the court may commit the minor to DCFS for care and service. 705 ILCS 405/2-27(1)(d) (West 2010). On review, the circuit court's dispositional decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the circuit court committed an abuse of discretion by selecting an inappropriate disposition. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009).

¶ 20 In the case before us, the circuit court found Matthew to be unfit, unable or unwilling, and Ashley to be unfit and unable, to care for, protect, train or discipline L.S. On appeal, the respondents contend that the circuit court's finding that Matthew and Ashley are unfit, unable, or unwilling to parent L.S. was against the manifest weight of the evidence. In particular, the respondents contend that the court's determination was based on financial circumstances alone, and was unrelated to the desired end of correcting the conditions which led to L.S.'s removal, as both of the respondents claim they have complied with large portions of the service plan and have achieved the goal of remedying the conditions which led to the removal of their children. We disagree.

¶ 21 Although the respondents have completed some of their required services, counseling and compliance with visitation are still ongoing. First, Matthew failed for a significant period of time to cooperate with DCFS and chose not to participate in recommended services for nearly one year from the date DCFS took L.S. into custody. At the time of the dispositional hearing, Matthew lived in a homeless shelter in Chicago, had no driver's license, no means of transportation, and was unemployed with no means of income to support L.S., who, at that time of the hearing, was two years and four months old.

¶ 22 Aside from Matthew's troubling financial issues, the record reveals, and the court took judicial notice of, Dr. Frey's psychological evaluation from January 2012, approximately four months before L.S. was born, that indicated Matthew was a narcissist with controlling and domineering behaviors, which posed risks if A.S. was returned to him or a newborn placed in his care.

¶ 23 On November 6, 2012, and December 4, 2012, following the removal of L.S., Matthew underwent a mental health assessment that revealed a diagnosis of "Bi-Polar 1 most recent episode manic moderate." The circuit court noted that Matthew had made progress by beginning suboxone treatment in 2012, benzodiazepine dependence treatment in 2013, as well as undergoing maintenance for opioid treatment since May 28, 2014. However, what appeared troubling for the circuit court was that, despite Matthew's testimony that he underwent extensive therapy and treatments, no detailed records or documentation regarding the length of his participation in these programs were produced at the dispositional hearing. Thus, although it appears Matthew has participated in extensive counseling based on his testimony, the record supports the court's determination that without documentation it is uncertain whether Matthew's counseling has improved the conditions which led to his children's removal.

¶ 24 The circuit court found that Matthew had consistently exhibited a lack of interest or concern in the return of his children. The court found that evidence supported the conclusion that overall Matthew had refused to cooperate with the requested goals and service plan requirements provided by DCFS. Not only did Matthew regularly cancel or miss scheduled visitation, but he refused in May 2013 to take part as a respondent in the adjudicatory hearing. Upon the court inquiring as to why Matthew chose not to appear in court as a party to defend himself against the State's allegations contained in the petition, Matthew responded that he had frustrations with DCFS and the legal system for tearing apart his family.

¶ 25 With regard to Ashley, the circuit court discussed her mental health progress. In 2012, before L.S. was removed, Dr. Frey indicated that Ashley suffered from depression, anxiety, and dependency personality issues that contributed to her inability to make healthy decisions, as well as her codependency issues with Matthew. In 2014, Dr. Bellamy indicated that Ashley had "an unrealistic, inflexible, and exaggerated sense of personal virtue and may use denial and repression to present herself in a favorable manner." In February 2014, Ashley began therapy sessions at Forward P.C.; however, as the court indicated, it is unclear to what extent those therapy sessions have addressed Ashley's ability to allow herself to be controlled and manipulated by Matthew, as no detailed records of those sessions were presented before the court.

¶ 26 With regards to both of the respondents, the record shows that both Matthew and Ashley exhibited a poor showing with scheduled visitation with their children. Between February 1, 2014, and August 11, 2014, the respondents missed or cancelled 22 of the 37 scheduled visits. In addition, both of the respondents failed to visit L.S. from July 31, 2014, through September 5, 2014, the first day of the dispositional hearing. Furthermore, not only did the respondents miss a fair amount of the scheduled visits, but they requested several modifications to accommodate their drive from Chicago to Effingham. However, they still missed over half of the scheduled visits. Thus, they ultimately spent less time with their children as a result. Lastly, the record reveals that both of the respondents have attempted to use distance as a viable excuse, however, they voluntarily elected to move hours away from L.S., with full understanding that compliance with visitation would remain a required service goal.

¶ 27 The circuit court also addressed the many inconsistencies within Ashley's testimony. First, Ashley testified on May 31, 2013, that she had obtained a judgment of dissolution of marriage against Matthew on May 16, 2013. Second, Ashley testified that Matthew was not the biological father of her fourth child, M.S., but that M.S.'s father was Caleb Akers. However, the court found it alarming that after M.S. was born, Ashley immediately placed her in the possession and care of Matthew's mother, Kristen Adams, not the care and custody of the alleged father, Caleb Akers, or her parents, who already had permanent custody of her oldest child, C.M. In fact, even more alarming was that on August 9, 2013, less than one month after the birth of M.S., Ashley filed a sworn petition for guardianship asserting that she was unable to care for M.S., and requesting that Kristen Adams be appointed as M.S.'s temporary guardian. Further, just recently before the dispositional hearing in September 2014, Matthew was living with Ashley's parents for over eight months, despite their divorce which was finalized in May 2013. Additionally, both of the respondents testified that Matthew only lived with her parents for a short period after their motor vehicle accident on February 12, 2014. However, as the court noted, Matthew notified his probation officer on January 27, 2014, of his new address in Brookfield with Ashley's parents.

¶ 28 Based on the above testimony, the court found that Ashley's testimony and aforementioned actions regarding M.S.'s placement suggested that she continued to have an ongoing relationship with Matthew, in which he was likely still able to exert control over her. Thus, the court's initial concerns continue in that Ashley appears to have

positioned herself to be under the continual control of Matthew, a reason her children were removed from her care and custody.

¶ 29 Furthermore, the record supports the circuit court's determination that L.S., who has lived with his foster parents since he was born, has developed a strong attachment and is in an environment in which he is thriving. Thus, we agree it is in the best interest of L.S. to remain in this stable environment at this time.

¶ 30 After a careful review of the record, it is this court's determination that the circuit court took great care to review all of the evidence presented over the course of the three-day dispositional and permanency hearing, took judicial notice of relevant prior court proceedings, and put in writing a detailed factual basis supporting the court's determination that the respondents were unfit, unable or unwilling to care for L.S., a neglected minor. Further, the court considered all relevant factors, which did include those that weighed in favor of the respondents, and the court's determination was in no way based solely on the respondents' financial circumstances. The court did make reference to Matthew's unemployment and homelessness, and Ashley's unemployment and lack of means to support L.S. However, those issues raised by the court were both proper and appropriate, as these factors, coupled with the issues detailed above, pose a hindrance for L.S.'s need for stability and safety. Furthermore, the record reveals that the court found both respondents had made progress since L.S. had been removed in 2012, by attending counseling sessions and other services. However, as a whole, the court determined the issues which led to L.S.'s removal still remained.

¶ 31 For the reasons stated herein, we hold that the circuit court's finding that the respondents were unfit, unable or unwilling to parent L.S. was not against the manifest weight of the evidence. The order of the circuit court of Effingham County is hereby affirmed.

¶ 32 Affirmed.