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2015 IL App (5th) 150051-U

NOTICE
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NO. 5-15-0051

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> L.K., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Montgomery County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 13-JA-1
)	
Matthew K.,)	Honorable
)	Douglas L. Jarman,
Respondent-Appellant).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Cates and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's decision, pursuant to section 2-28 of the Juvenile Court Act of 1987 (705 ILCS 405/2-28 (West 2014)), to change the permanency goal of the minor from "return home within twelve months" to "substitute care pending determination of termination of parental rights" was not against the manifest weight of the evidence.

¶ 2 The respondent, Matthew K., appeals the January 26, 2015, order of the circuit court of Montgomery County, which, pursuant to section 2-28 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-28 (West 2014)), changed the permanency goal for the minor child, L.K., from "return home" to "substitute care pending determination of

termination of parental rights." For the reasons that follow, we affirm.

¶ 3

FACTS

¶ 4 On January 2, 2013, the petitioner, the People of the State of Illinois (the State), filed a petition for an adjudication of wardship and an application for shelter care for the minor child, L.K., who at the time was three months old. According to the petition, L.K. was neglected pursuant to section 2-3 of the Act (705 ILCS 405/2-3 (West 2012)) because his environment was injurious to his welfare. The petition for an adjudication of wardship alleged that L.K.'s mother, who is not a party to this appeal, had a history of substance abuse, was intoxicated on December 25, 2012, into December 26, 2012, and was unable to care for L.K. In addition, the petition alleged that the respondent, L.K.'s father, knew L.K.'s mother was not in a condition to care for the minor on those dates but left L.K. alone with her anyway. The application for shelter care alleged that it was a matter of immediate and urgent necessity for the health, safety, and best interests of L.K. to place him into the temporary custody of the Department of Children and Family Services (DCFS).

¶ 5 An emergency hearing on the State's request for temporary custody of L.K. took place before the Honorable Kelly D. Long the same day, pursuant to section 2-10 of the Act (705 ILCS 405/2-10 (West 2012)). The respondent was present at the hearing with L.K. L.K. had been in the respondent's care since the events leading to the petition for adjudication of wardship transpired on December 26, 2012. Following the respondent's testimony and recommendations by the State and the guardian *ad litem* that L.K. be transferred to the temporary custody of DCFS, the circuit court found that L.K. was a

neglected minor. The circuit court, citing pending orders of protection against the respondent and lack of a satisfactory investigation by DCFS, found that the best interests and safety of the minor required that the child be transferred into the temporary custody of DCFS. The circuit court ordered the respondent to surrender the child to DCFS immediately following the hearing. The transcript of the conclusion of the hearing reflects that the respondent was angry and hostile after that point in the proceedings, leaving the courtroom with all of L.K.'s belongings. The record contains a written order granting DCFS temporary custody of L.K. pursuant to section 2-10 of the Act (705 ILCS 405/2-10 (West 2012)).

¶ 6 DCFS initiated a service plan for the respondent on January 2, 2013, requiring the respondent to: (1) complete a domestic violence/anger management assessment; (2) complete a psychological assessment; (3) complete a substance abuse assessment and comply with random toxicology screenings; and (4) participate in parenting classes. DCFS also established a plan for the respondent to have supervised visits with L.K. for two hours per week.

¶ 7 A series of additional hearings was held on the shelter care petition commencing on February 6, 2013. On March 21, 2013, the circuit court entered a detailed order granting the shelter care petition. The circuit court found that the respondent had left L.K. in L.K.'s mother's care when he knew or should have known that L.K.'s mother could not properly care for him, had told the police when they left L.K. in his custody that he would reunite L.K. with L.K.'s mother, and that L.K.'s mother claimed that the respondent drugged her at one time. The circuit court found that the respondent exhibited

anger management issues, a lack of control, and an inability to conduct himself properly. Because the respondent had threatened DCFS caseworkers, the circuit court requested additional security at the courthouse during hearings when the respondent was present. The circuit court specifically stated that it did not consider the pending orders of protection against the respondent in its determination that the health, safety, and welfare of L.K. required that DCFS continue shelter care for L.K. pending the hearing on the adjudication of wardship.

¶ 8 A hearing on the petition for an adjudication of wardship took place on May 29, 2013. The respondent did not appear at the hearing. The circuit court entered an order adjudicating L.K. as a neglected minor, stating that L.K.'s mother had admitted the allegations pertaining to her neglect of L.K. A dispositional hearing was held on June 26, 2013. Neither the respondent nor L.K.'s mother appeared. During that hearing, the respondent's attorney informed the court that the respondent was verbally abusive and uncooperative. A DCFS-contracted caseworker testified that the respondent was uncooperative and combative and had made threats during visitation. After considering a DCFS report and the testimony of DCFS caseworkers, the circuit court entered an order granting the petition, making L.K. a ward of the court. The circuit court found that the service plan for the respondent was appropriate, and that DCFS should continue guardianship of L.K. Finally, due to threats that the respondent made to DCFS caseworkers, and information received by the court that the respondent followed L.K.'s foster parent home from visitation, the circuit court ordered that respondent's visitation with L.K. be in the presence of law enforcement officers. The respondent did not appeal

the dispositional order making L.K. a ward of the court.

¶ 9 Permanency hearings were held pursuant to section 2-28 of the Act (705 ILCS 405/2-28 (West 2012)) on December 4, 2013, and June 4, 2014, before the Honorable Kelly D. Long. The respondent failed to appear at the June 4, 2014, hearing. According to the permanency review reports from DCFS at these hearings, the respondent, as well as L.K.'s mother, was rated unsatisfactory on his service plans. The caseworkers testified that the respondent remained combative and aggressive. He had not completed any counseling or domestic violence services and had not been communicating with DCFS until August of 2013, when he re-initiated contact and requested referrals for his services. However, by the time of the June 4, 2014, hearing, he had not made any progress toward these services. His visits with L.K. were sporadic with a period of almost eight months between visits at one point in time. He had tested positive for THC in November 2013 and had refused toxicology screenings since that time. He had pending criminal charges and another order of protection was entered on behalf of L.K.'s mother during this period as well. Nevertheless, the permanency orders entered following these hearings maintained the goal that L.K. be returned home within 12 months. However, during the hearing on June 4, 2014, DCFS indicated that it was in the process of screening the case for a recommendation that the goal be changed to "substitute care pending determination of termination of parental rights." The circuit court admonished the mother that she must cooperate with DCFS or risk termination of her parental rights.

¶ 10 Following the June 4, 2014, permanency hearing, the respondent filed a number of *pro se* motions, requesting a change in venue due to Judge Long's alleged bias against

him, asking for a new court-appointed attorney due to his attorney's alleged ineffectiveness, and a motion to establish his paternity of L.K. and for custody of L.K. A hearing was held on his motions on July 16, 2014. Following that hearing, Judge Long granted the respondent's motion for appointment of new counsel, but denied the remaining motions. Nevertheless, Judge Long entered a recusal order on July 17, 2014, stating, in relevant part, as follows:

"Respondent has been dissatisfied with various attorneys, this Court and others herein. Respondent was provided with a new court-appointed attorney on 7-16-14 by this Court.

Respondent has failed to appear in court and has made and directed comments and statements toward attorneys, DCFS personnel and others herein.

Respondent's compliance with his DCFS service plan has been deficient.

In the interest of giving the respondent a further opportunity in this matter to correct the conditions which resulted in the minor being placed with DCFS, this Court recuses itself from further proceedings herein voluntarily."

¶ 11 On September 3, 2014, a permanency review hearing was held before the Honorable Douglas L. Jarman. The respondent's new court-appointed attorney was present but the respondent did not appear. The State announced its intent to change the permanency goal for L.K. from "return home within twelve months" to "substitute care pending determination of termination of parental rights." The respondent's attorney objected to the change in goal, arguing that he had just become involved with the case and that the "spirit" of Judge Kelly's recusal order was to give the respondent more time

to progress in his service plan. The objection was noted and a date set for a contested permanency hearing to take place. In the interim, the requirement that the respondent visit L.K. with law enforcement presence was lifted by motion of the respondent's attorney and the court ordered DCFS to provide transportation services to the respondent.

¶ 12 A hearing on the DCFS recommendation to change the permanency goal to "substitute care pending determination of termination of parental rights" was held before Judge Jarman on January 8, 2015. All parties were present and represented by counsel. Robbie Donaldson, a child welfare specialist contracted by DCFS to provide services toward reunification, testified consistent with a DCFS report filed on December 9, 2014. She testified that L.K. was appropriately bonded to his foster family and that both the respondent and L.K.'s mother had demonstrated a lack of progress on their service plans. At the time of the hearing, the respondent had maintained stable employment and was living with his paramour, who had a previous order of protection against the respondent. The respondent had one active order of protection against him and had pled guilty to criminal charges for bad checks since the inception of the case.

¶ 13 Although Ms. Donaldson testified that the respondent interacted very well with L.K. during visits, his visits were sporadic. The respondent had missed two out of nine visits with L.K. since the requirement that visitation be held in the presence of law enforcement was lifted and there was a period of four to six months prior to that during which he did not make any visits with L.K. With regard to the individual counseling requirement of the service plan, the respondent made no progress until June 2014, when he completed his assessment, and the respondent was partaking in these services as of the

time of the hearing. With regard to the domestic violence education requirement of the service plan, the respondent had made no progress until September 2014 and was undergoing those services at the time of the hearing as well. The respondent had completed the parenting education requirement of his service plan as of July 2014. He underwent a psychological assessment that resulted in a diagnosis of anti-social disorder. He had refused recommended substance abuse treatment after a toxicology screening that was positive for THC in November 2013.

¶ 14 L.K.'s mother testified on her own behalf but provided no testimony relevant to the respondent. No other witnesses testified. L.K.'s guardian *ad litem* indicated her agreement with the DCFS recommendation to change the permanency goal to "substitute care pending determination of termination of parental rights." Judge Jarman took the matter under advisement and entered an order on January 26, 2015, which followed the DCFS recommendation and changed the permanency goal accordingly. An addendum was attached to the permanency order and was referred to throughout the order.

¶ 15 On February 6, 2015, the respondent filed a petition for leave to appeal the January 26, 2015, permanency order, pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014). This court granted the petition on February 27, 2015, and an expedited briefing schedule was set pursuant to Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010).

¶ 16

ANALYSIS

¶ 17 Once a child is adjudicated neglected and placed in the custody of DCFS, the court must regularly conduct "permanency hearings" during the pendency of the case to

determine the proper placement of the child. *In re Alicia Z.*, 336 Ill. App. 3d 476, 494 (2002) (citing 705 ILCS 405/2-28(2) (West 2000) and *In re D.S.*, 198 Ill. 2d 309, 326 (2001)). At the conclusion of a permanency hearing, the circuit court must enter a written order setting forth a permanency placement goal for the child. *Id.* (citing 705 ILCS 405/2-28(3) (West 2000)). The circuit court is required by statute to set a permanency goal that is in the best interests of the child, considering the following factors: (1) the age of the child; (2) options available for permanence, including both out-of-state and in-state placement options; (3) current placement of the child and the intent of the family regarding adoption; (4) emotional, physical, and mental status or condition of the child; (5) types of services previously offered and whether or not the services were successful and, if not successful, the reason the services failed; (6) availability of services currently needed and whether the services exist; and (7) status of siblings of the minor. 705 ILCS 405/2-28(2) (West 2014). In addition, the court is required to consider: (i) the permanency goal contained in the service plan; (ii) the appropriateness of the services contained in the plan and whether those services have been provided; (iii) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal; and (iv) whether the plan and goal have been achieved. *Id.*

¶ 18 The circuit court has the discretion to select a permanency goal and to render a final decision as to the placement of the child that is in his or her best interests, and the court's decision will not be disturbed unless it is against the manifest weight of the evidence. *In re Alicia Z.*, 336 Ill. App. 3d at 494-95. "A finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the

findings appear to be unreasonable, arbitrary, or not based on the evidence." *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 890 (2010). With these standards in mind, we turn to the respondent's contentions on appeal.

¶ 19 The respondent first argues that the circuit court erred in changing the permanency goal because there was never an adjudication that the respondent neglected L.K. However, as the respondent concedes in his reply brief, this court no longer has jurisdiction to review the circuit court's adjudication that L.K. was neglected or the dispositional order making L.K. a ward of the court. See *In re Leona K.*, 228 Ill. 2d 439, 456-57 (2008) (orders adjudging a minor a ward of the court and placing the minor in DCFS custody are regarded as final pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and notice of appeal must be filed within 30 days after entry thereof pursuant to Illinois Supreme Court Rule 303 (eff. May 30, 2008)). The failure to file a timely appeal is a jurisdictional requirement that cannot be overlooked by this court. *In re Estate of Goodlett*, 225 Ill. App. 3d 581, 587 (1992). This court is simply without the authority to determine the merits of the adjudication of neglect and L.K.'s wardship.

¶ 20 Despite the finality of the circuit court's adjudication of neglect and L.K.'s wardship, the respondent contends for the first time in his reply brief that the fact that the respondent never neglected L.K. goes to the circuit court's consideration of whether the service plan related to the respondent was appropriate. However, assuming that there was insufficient evidence that the respondent neglected L.K., a review of the record reveals that the circuit court was privy to a myriad of other facts that demonstrated that the respondent needed the services DCFS recommended in order to provide an

environment for L.K. that was consistent with his best interests. The evidence in the record establishes that the respondent had anger management issues, a history of domestic violence and other criminal conduct, and had admitted to some use of illicit substances. The court found a finding that the DCFS service plan, which required the respondent to undergo individual counseling, domestic violence assessment and services, and substance abuse services, as well as parenting classes, was appropriate. The finding is clearly not against the manifest weight of the evidence, irrespective of the propriety of any allegation that the respondent himself actually neglected L.K. Once L.K. was adjudicated neglected, and was made a ward of the court, the consideration of the court became his best interests. See 705 ILCS 405/2-28(2) (West 2014). The service plan recommended for the respondent in order to meet the goal of return home within 12 months was clearly appropriate considering the evidence before the circuit court. Following the adjudication of neglect and the disposition of L.K. as a ward of the court, at which the respondent did not appear, the respondent's duty to cooperate with DCFS or risk termination of his parental rights was paramount, as evidenced by the admonishment that he was required to cooperate in each and every order entered in this case.

¶ 21 The respondent next argues that Judge Jarman's order changing the permanency goal was inconsistent with Judge Kelly's July 17, 2014, recusal order. However, a prior judge's recusal order is not a factor for the court to consider in determining permanency pursuant to section 2-28(2) of the Act. 705 ILCS 405/2-28(2) (West 2014). While Judge Kelly recused himself "in the interest of giving the respondent a further opportunity in this matter to correct the conditions which resulted in [L.K.] being placed with DCFS,"

Judge Jarman had to consider the evidence before him regarding the lack of progress by both parents in determining whether the best interests of L.K. would be served by continuing with a "return home" permanency goal. The recusal simply does not provide this court with a basis to find that the change in the permanency goal is against the manifest weight of the evidence.

¶ 22 Next, the respondent argues that the circuit court's order changing the permanency goal was inconsistent with its addendum. However, a reading of the order in conjunction with the addendum reveals that the addendum is entirely consistent with the permanency order. In paragraph "a" of the permanency order, the circuit court found that the appropriate permanency goal is "[s]ubstitute care pending determination of termination of parental rights," and that "this goal was selected and the other goals were ruled out because: 'see addendum.' " Paragraph "a" of the addendum states that "the parents have failed to comply with the service plan and cooperate with [DCFS] which they are required to do, and thus have not made reasonable and substantial progress toward returning the minor home for the reasons stated therein."

¶ 23 The lettering of the paragraphs in the addendum corresponds with the lettering of the order making reference to the addendum. As such, paragraphs "b" and "c" of the order contain findings that L.K.'s mother and the respondent had not made reasonable and substantial progress toward the return of L.K., and then reference the addendum as an explanation of the actions that L.K.'s mother and the respondent would need to complete to justify a finding of reasonable efforts and progress. Paragraph "c" of the addendum then explains that the respondent must attend individual counseling, which he has done

only sporadically, and be able to apply the skills learned in that counseling. He must complete the domestic violence services to which he was referred and attend outpatient substance abuse services. He must regularly engage in visits with L.K. in an appropriate manner, as his attendance for visits has been extremely inadequate. He must cooperate with DCFS. This explanation of the actions that would be necessary on the part of each parent to justify a finding of reasonable progress is not inconsistent with the permanency order, but an extension thereof.

¶ 24 The portion of the permanency order that outlines what the respondent must do in order to show reasonable progress toward the return of L.K. is important to note because the change in the permanency goal does not amount to a finding of unfitness. Unless and until a petition is filed pursuant to section 2-29 of the Act (705 ILCS 405/2-29 (West 2014)), the court finds clear and convincing evidence that the respondent is unfit, and, in a separate, bifurcated hearing, that it is in the best interests of L.K. that his rights be terminated, the respondent has the opportunity to complete the goals outlined in his service plan. Based on our review of the record, however, which contains ample evidence of a lack of progress on the part of both parents, we cannot say that the circuit court's decision to change the permanency goal to "substitute care pending determination of termination of parental rights" was against the manifest weight of the evidence.

¶ 25 The last argument the respondent makes in his brief is that the circuit court erred in failing to give the respondent his appeal rights at the shelter care hearing. The respondent has cited no authority to support his argument and we find that it is waived pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). *Putman v. Village*

of *Bensenville*, 337 Ill. App. 3d 197, 201 (2003). Waiver aside, we find that any irregularity in the procedure surrounding the shelter care hearing should have been addressed in an appeal of the dispositional order, over which, as explained above, this court has no jurisdiction. See *In re Leona K.*, 228 Ill. 2d 439, 456-57 (2008).

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, the January 26, 2015, order of the circuit court of Montgomery County, which changed the permanency goal for L.K. from "return home within twelve months" to "substitute care pending determination of termination of parental rights, is affirmed.

¶ 28 Affirmed.