2016 IL App (2d) 160048-U
No. 2-16-0048
Order filed May 26, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ALYSSA C., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 15-JA-58
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Todd C.,	)	Francis Martinez,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision finding the respondent to be unfit and placing the minor in the guardianship of her mother was not against the manifest weight of the evidence.

¶ 2 On October 21, 2015, the minor, Alyssa C., was found to be a neglected minor under section 405/2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)). On December 29, 2015, the trial court found the minor's father, the respondent, Todd C., unfit to care for the minor and placed the minor in the guardianship of Megan C., the minor's mother. The respondent appeals from the December 29, 2015, dispositional order. We affirm.

¶ 3 BACKGROUND

¶ 4 The minor, Alyssa C., was born on May 12, 2010. On February 20, 2015, the State filed a neglect petition pursuant to section 2-3(1)(b) of the Juvenile Court Act. The petition alleged that the minor was a neglected minor in that her environment was injurious to her welfare because her parents had a history of engaging in volatile and aggressive behavior, thereby placing the minor at risk of harm. The record indicates that the minor had three half-siblings: a half-sister, Rebecca, and two half-brothers, Christian and Jonathan. Megan C. was the mother of the minor and her half-siblings. The State filed neglect petitions as to these children as well, alleging the same injurious environment. The petitions were consolidated for hearing. On March 24, 2015, a guardian *ad litem* was appointed to represent Rebecca, Christian, Jonathan, and the minor. Adjudication hearings were held on June 10, July 1, and August 11, 2015.

¶ 5 Michael Schneider testified that he was a Rockford police officer. A few years earlier, on November 14, 2012, he was called to Megan's residence because the respondent requested a welfare check when Megan did not show up with the minor for a court-ordered visitation. The respondent told the officer that Megan had called and threatened to kill the minor and herself. When Officer Schneider went to Megan's residence and spoke to her, she denied the respondent's allegations. She stated that the reason she did not bring the minor for visitation was that the previous week the respondent had threatened to kill her, the minor, and himself. After that, she filed a petition for temporary custody of the minor.

¶ 6 Officer Schneider further testified that the respondent showed up at Megan's residence while he was there. The respondent was upset that he could not take the minor for visitation. Officer Schneider explained that the policy of the Rockford police department was that if there were allegations or safety concerns, a child would not be removed from the parent that had physical custody at that time, regardless of whether there was a court-ordered visitation. Officer Schneider told the respondent that his vehicle was not appropriate for transporting the minor as it

was cluttered and there was no car seat. The respondent then left the residence. However, the respondent continued to call Megan on the phone. Officer Schneider's partner spoke with the respondent on Megan's phone and told him that if he did not stop calling Megan, he would issue a telephone harassment report. Officer Schneider then advised Megan that she could get a domestic violence order of protection.

¶ 7 Brian Smith testified that he was a deputy with the Boone County sheriff's department. On July 31, 2013, he was called to an address in Rockford based on a report by Megan that the respondent had sexually assaulted her. She told Officer Smith that in late 2012, she and the respondent separated due to his erratic behavior. She stated that they fought a lot, he was constantly demanding sex and would get upset when she would deny him, and that she eventually received an order of protection against him. Megan told him that after she obtained the order of protection, things became worse. The respondent would threaten not to return the minor after his visitation. Additionally, he would follow her to work, accuse her of cheating, try to listen to her phone calls and read her emails, and he threatened to plant drugs on her so that she would be arrested and lose her job. Megan also told Officer Smith that the parties had reconciled in March 2013. However, on July 29, 2013, she woke up naked and the respondent was having sex with her. She said that she pushed the respondent off and he became very angry. She was not sure if she wanted the respondent to be arrested. Officer Smith gave her information about how to go forward with the case and obtain an order of protection if she wanted. She stated that she wanted to wait and make a decision at a later time.

¶ 8 Officer Smith further testified that Megan called him on August 28, 2013. She stated that when she woke up that morning, her legs, her pants and her sheets were wet. The respondent told her that he masturbated and then ejaculated on the bed. She pressed charges at that point

and filed for an order of protection. Officer Smith served the order of protection on the respondent and the respondent did not deny the allegations.

¶ 9 Additionally, Officer Smith testified that he was assigned a case involving the parties on September 9, 2013. On that date, the respondent had called DCFS and reported that Megan's father had performed oral sex on one of Megan's sons and had shown him pornography. On September 13, 2013, Officer Smith conducted victim-sensitive interviews with three of Megan's children: Christian, Jonathan, and Rebecca. The children did not indicate that their grandfather had done anything inappropriate to them.

¶ 10 Sherry Burks testified that she was a child protection specialist for DCFS. She investigated mandated reports. On October 24, 2014, DCFS received a hotline report from the respondent indicating that the minor was left unattended downstairs at her home while Megan was passed out upstairs. After an investigation, the allegation was determined to be unfounded. Megan had worked 18 hours the day before and was resting while the respondent was present in the home. However, after the respondent left, Megan took the minor to her brother's house. The minor was never left unsupervised.

¶ 11 Burks further testified that, about November 1, 2014, in the course of her investigation, she spoke with the minor's half-siblings, Christian (9 years old), Rebecca (14 years old), and Jonathan (7 years old), about the relationship between the respondent and Megan. Christian said that he would hear yelling and screaming at night from his mother telling the respondent to "stop." He had seen the respondent hitting his mother. Christian also said that the respondent took him to Chuck-E-Cheese on one occasion. While there, the respondent told Christian that his father used drugs but that if he told anyone bad things would happen. The respondent then took Christian back to the house and showed him some guns. Rebecca stated that she had seen the respondent laying on top of her mother and hitting her. Jonathan stated that he heard yelling

and screaming at night when his mom was telling the respondent to get off of her. All the children were afraid of the respondent. Burks found the children to be competent and credible in their reporting.

¶ 12 On November 7, 2014, Burks spoke with Megan. Megan stated that there was a history of the respondent calling DCFS and making false reports and that there had been several orders of protection issued. There were several times when she told the respondent that she did not want to have sex and then he would ejaculate on her or in her underwear drawer. Megan stated that she was afraid of the respondent because, when his first wife left him, the respondent shot himself in the head and there were guns in the home. Burks testified that at some point she spoke with Megan's parents, Dennis and Sherry Puckett. They had heard the respondent screaming at Megan but they never saw him hit her. Based on the investigation, a safety plan was put in place.

¶ 13 Joseph Broullard testified that he was a deputy with the Winnebago County sheriff's police. On October 27, 2014, he was called to the respondent's address because the respondent had reported that he found a controlled substance, suspected cocaine, at his home. The respondent told him that Megan had moved out a couple days earlier and had left a basket of clothes behind. The respondent had gone through the basket and found, in a metal tin, some possible rock cocaine. Officer Broullard field tested the substance and it tested positive for cocaine. He never spoke with Megan about the allegations. However, he collected the evidence and reported the incident to the Department of Children and Family Services (DCFS). A DCFS report indicated the Megan took two drugs tests in early November 2014 and both were negative.

¶ 14 Officer Owen McGinnis of the Rockford police department testified that he was called to the respondent's address on November 4, 2014. The respondent made a complaint that when he was driving in the area he noticed that Megan was following him in her car in violation of an

order of protection. McGinnis was unable to find Megan in the area and was not able to verify the respondent's allegations.

¶ 15 Daniel Hoffman testified that he was a deputy with the Winnebago County sheriff's department. On December 11, 2014, the respondent reported that vehicles were following him and driving past his residence. The respondent related three occurrences on November 28 or 29, December 5, and December 11, 2014. On one of those occasions the respondent was able to get a license plate number. Officer Hoffman ran the license plate it turned out to be the vehicle owned by Megan's boyfriend.

¶ 16 Mario Rutiaga testified that he was a deputy with the Winnebago County sheriff's department. On December 15, 2014, he was dispatched to an address in Machesney Park because Megan wanted to file a report of domestic violence. Megan reported that she observed a green car following her and she believed it was the respondent. She was afraid of the respondent and was worried that he was following her so that he could see the minor. She told Officer Rutiaga that the respondent had an order of protection against her.

¶ 17 Officer Elizabeth Hughes of the Rockford police department testified that, on December 13, 2014, she was assigned to investigate an incident that allegedly occurred during the exchange of the minor at the criminal justice center. The respondent alleged that when they were entering the center, Megan's boyfriend made threatening comments to him. Officer Hughes testified that she reviewed surveillance video of the exchange but that there was no audio recording so she was unable to verify if there were any comments between the parties. On January 9, 2015, Officer Hughes took the respondent's statement concerning a number of police reports he filed. The respondent told her that on December 27, 2014, after another exchange of the minor at the criminal justice center, Megan was driving next to him and tried to run him off the road. At the same time, Megan's boyfriend flipped him off.

¶ 18 Officer Hughes testified that on January 15, 2015, she spoke with Megan about these incidents. Megan denied the allegations. The next day, Megan called Officer Hughes. Megan told Officer Hughes that the minor had stated that during her last visitation with the respondent: (1) the respondent rented a large red truck and was following Megan around town; (2) the minor was not wearing a seatbelt when they were driving around; and (3) the respondent stated that he was going to hurt Megan. Officer Hughes spoke with the respondent about these allegations and the respondent denied them. Officer Hughes did not speak with the minor because the minor's age required her to be interviewed by someone else.

¶ 19 Following testimony, the State moved to have various exhibits admitted into evidence. Admitted into evidence were numerous petitions for order of protection and numerous petitions for dissolution of marriage. Additionally, there was a DCFS "Indicated Packet," which included reports completed on various dates. A DCFS report dated January 29, 2015, stated that the respondent was unwilling to participate in services. The State rested its case.

¶ 20 At the start of the August 11 hearing, the respondent's counsel stated that he had advised the respondent that he, the attorney, was on medication that day: hydrocodone and a muscle relaxer as a result of a back injury. Despite the medication, the respondent wished to proceed with the hearing and did not want to request a continuance. The trial court noted that the respondent's attorney sounded lucid and appeared capable of proceeding. The respondent's attorney requested that the respondent be able to sit next to him and the trial court allowed the request.

¶ 21 The respondent called Patricia Rabiela to testify on his behalf. Rabiela testified that she was the respondent's aunt. The respondent's attorney started asking Rabiela questions about her own children. The trial court questioned the relevance. The respondent's attorney stated that he "tried to discuss this with my client to get him to understand that in fact this is not the phase of

the case for this testimony." The trial court informed the respondent and his attorney to ask questions that are only relevant to the adjudicatory phase of the proceeding.

¶ 22 Thereafter, Rabiela testified that after Megan and the respondent were married they had come to visit her along with all the children. The respondent interacted well with all the children and she never observed the respondent become violent with the children. They had not visited in about a year. However, within the last year, she had provided some daycare to the minor. During this time, she observed that the respondent was the sole caretaker of the minor. Eventually, she told the respondent that he had to find a more sufficient daycare situation for the minor. The respondent then placed the minor in daycare at his own expense. The respondent and the minor would still visit her every weekend. The respondent and the minor had a very loving father-daughter relationship.

¶ 23 Rabiela had known the respondent his whole life. She had never observed him become violent with any person. The respondent was like a big teddy bear. During one of the visits with the whole family, within the last four years, she had a conversation with Megan concerning Megan's drug use. Megan indicated that one of her children was having trouble in school because of her cocaine use during pregnancy. Rabiela testified that Megan was the respondent's third wife. He had one child with each wife. The respondent interacted well with all his children. She was aware that the respondent had attempted suicide at one time, but she described the event as a struggle over a gun with one of his other wives.

¶ 24 Jeremy Myers testified that he had rented property to the respondent and Megan. During that time he observed them with the children. The respondent was never inappropriate with the children and the children never appeared to be afraid of him. The grandparents were there much of the time to help with the children. He rarely saw Megan with the children. When he observed the children, they were with the respondent about 60% of the time and with Megan about 40% of

the time. He never saw the respondent or Megan become violent with the children. Thereafter, the respondent's attorney indicated that the respondent would not testify and that he was resting his case.

¶ 25 On September 16, 2015, the parties appeared for closing arguments. The respondent made an oral motion to reopen the proofs so that he could testify. The basis for the request was that his attorney was on medication at the previous hearing. The trial court denied the motion. After hearing closing arguments from the State, the respondent, and the guardian *ad litem*, the trial court rendered its ruling. The trial court noted that each of the four children had a single-count petition pending in their respective cases. The trial court found there was extensive evidence that Megan and the respondent had a very contentious relationship. The trial court also found that there was evidence of domestic violence between the respondent and Megan and that the children witnessed this violence. Additionally, there were unfounded allegations of sexual abuse which resulted in the children having to go through victim-sensitive interviews. The trial court found that the respondent had engaged in surveillance of Megan which was injurious to the children's welfare. The trial court also found that the respondent was obsessed with discrediting Megan as a mother and that he had involved the children in his efforts. The trial court concluded that the allegations in the petitions were proven by a preponderance of the evidence and that the children were neglected minors. The trial court set the matter over for disposition.

¶ 26 On December 29, 2015, a dispositional hearing was held. DCFS filed a report to the court. In that report, it was stated that the respondent refused to register with Safe Harbor because he did not want to have visits with the minor if they were only going to be for one hour. The respondent also failed to attend recommended services with Clarity Counseling. He had attended one session and reported that there was no reason for him to continue counseling. Additionally, the respondent's attorney filed a motion to withdraw, which the trial court granted.

The trial court noted that the respondent received notice of the hearing but failed to appear. If the respondent had appeared, the trial court would have given him 21 days to secure new counsel. However, the trial court found that the respondent waived his presence. The State indicated that the guardianship and custody of Rebecca, Christian and Jonathan was being placed with their respective parents and that their three cases would be closed. The State requested that the guardianship and custody of the minor be solely with Megan. The guardian *ad litem* agreed with that recommendation and further requested that there be no contact between the respondent and the minor.

¶ 27 The trial court reiterated that the respondent willfully failed to appear and that DCFS reported he was noncompliant throughout the proceedings. The respondent failed to register with Safe Harbor to effectuate visitation with the minor and failed to engage in services with Clarity Counseling. The trial court made a finding that, based on the respondent's noncompliance with services and the evidence at the adjudicatory hearings of his contentious conduct, the respondent was unable, unfit, and unwilling to properly protect or parent the minor. The trial court adjudged the minor to be a ward of the court and found that it was in the best interest of the minor to remain in the guardianship of her mother. Thereafter, the respondent filed a timely notice of appeal.

¶ 28 ANALYSIS

¶ 29 On appeal, the respondent argues that the trial court's findings, that he was unfit to parent the minor and that it was in the best interest of the minor to be in the guardianship of Megan, were against the manifest weight of the evidence. The respondent also argues that the trial court abused its discretion in failing to allow him to reopen proofs following the adjudicatory phase of the case.

¶ 30 Pursuant to the Juvenile Court Act, the trial court must employ a two-step process to decide whether a minor should become a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18. The first step is the adjudicatory hearing on the neglect petition. At the adjudicatory hearing, "the court shall first consider only the question whether the minor is abused, neglected or dependent." 705 ILCS 405/2-18(1) (West 2014). At this stage, the focus is solely upon whether the child has been neglected, and the issue of who may be responsible for the child's neglect is irrelevant. *In re A.P.*, ¶¶ 19-20. A reviewing court will not disturb a trial court's finding of neglect unless it is against the manifest weight of the evidence. *Id.* ¶ 17.

¶ 31 At the conclusion of the adjudicatory hearing, if the trial court determines that the minor is neglected, the trial court then moves to step two, the dispositional hearing (705 ILCS 405/2-21(2) (West 2014)). *In re A.P.*, ¶ 21. At the dispositional hearing, the trial court determines whether the parents of a minor are "unfit or are 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 that 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) (West 2014). A juvenile petition places both parents on notice that their fitness will be at issue at a dispositional hearing. *In re M.B.*, 332 Ill. App. 3d 996, 1007 (2002). The State must prove parental unfitness for dispositional purposes by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). A trial court's best-interest determination will not be disturbed unless it is against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d 329, 344 (2010). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re A.P.*, ¶ 17.

¶ 32 The defendant's first contention on appeal is that the trial court's finding that he was unfit to parent the minor and that the minor should remain in the guardianship of Megan was against

the manifest weight of the evidence. In making its determination as to disposition, the trial court took judicial notice of the evidence presented at the adjudicatory hearings. Based on that evidence, and on the recommendation of the guardian *ad litem*, we cannot say the trial court's finding was against the manifest weight of the evidence. Testimony from numerous police officers indicated that there was conflict between the parties starting in late 2012 and continuing to December 2015. The conflict included allegations that the respondent sexually assaulted Megan; threatened to kill her and the minor; made numerous false reports to DCFS concerning the minor and Megan; and that the respondent had stalked Megan. At one point, the minor reported to Megan that she was with the respondent in a red truck when he was stalking Megan. The minor was not wearing a seat belt and the respondent told the minor that he was going to hurt Megan. The minor's half-siblings reported conflict between the parties at home including screaming, yelling, and physical violence by the respondent against Megan.

¶ 33 Additionally, the record indicates that Megan was compliant with DCFS services and there were no safety concerns regarding her care of the minor. However, the respondent was not compliant with DCFS recommended services. The respondent refused to register with Safe Harbor because he did not want to see the minor if it was only for one hour. While the respondent attended one session at Clarity Counseling, he believed there was no need for him to be there and did not attend another session. The guardian *ad litem* agreed with the State and recommended that guardianship of the minor be placed with Megan. Accordingly, based on the facts of the present case, we cannot say that an opposite conclusion to that of the trial court, finding the respondent unfit and that guardianship of the minor should be with Megan, was clearly evident.

¶ 34 In so ruling, we note that the respondent takes issue with the fact that the trial court's ruling made reference to "children" and was not strictly limited to the minor. However, this was

a combined hearing involving a neglect petition as to all four of Megan's children. Based on our own review of the record, any reference to "children" rather than "child" was not improper and is not a basis to find that the trial court's determination was against the manifest weight of the evidence.

¶ 35 The respondent also complains that the trial court did not discuss the testimony of Officer Broullard that a tin can found among Megan's clothing after she moved out tested positive for cocaine, or the testimony of a relative that Megan had admitted to using cocaine during one of her pregnancies. First, the trial court is not required to reiterate every piece of evidence that it considered; rather, it is presumed that the trial court considered all competent and relevant evidence. *People v. Padilla*, 173 Ill. App. 3d 357, 361 (1988). Moreover, that Megan was a cocaine user is not the only reasonable inference from the evidence. In July 2013 Megan told Officer Smith that the respondent had threatened to plant drugs on her. As such, a reasonable inference is that the cocaine found among Megan's clothing in October 2014 was placed there by the respondent. This inference is further supported by a DCFS report, which stated that Megan took two drug tests in November 2014 and both of those tests were negative. As to the testimony of the respondent's relative that Megan admitted using cocaine during one of her pregnancies, it is possible that the trial court did not find this testimony credible or that the trial court did not find Megan's past drug use indicative of current drug use, especially in light of the more recent negative drug tests. See *People v. Steidl*, 142 Ill.2d 204, 226 (1991) (trial court is responsible for determining the weight to be given witnesses' testimony, the witnesses' credibility, and the reasonable inferences to be drawn from the evidence).

¶ 36 The respondent's second contention on appeal is that the trial court erred in not allowing him to reopen the proofs and testify at the adjudicatory stage of the proceedings. The respondent argues that (1) his counsel's medical condition resulted in an inadvertent failure to call him to

testify; (2) the State would not have been unfairly prejudiced had the trial court reopened the proofs; (3) his right to rebut the testimony against him was of utmost importance to the case; and (4) there was no just reason to deny his motion. The respondent contends that the denial of his motion to reopen the proofs denied him his fundamental liberty interest in the care, control, and custody of his child.

¶ 37 A trial court has the authority to allow a litigant to reopen its case under appropriate circumstances. *People v. Hopson,* 2012 IL App (2d) 110471, ¶ 19. Factors to consider in this analysis include: (1) whether the failure to introduce the evidence was inadvertent; (2) any surprise or unfair prejudice to the other party; (3) the importance of the new evidence; and (4) whether there were cogent reasons that justified denying the motion to reopen. *Id.* The trial court's denial of a motion to reopen the proofs is reviewed for an abuse of discretion. *Id.*

¶ 38 In the present case, we cannot say that the trial court abused its discretion in denying the respondent's motion to reopen the proofs. The record indicates that the failure to testify at the adjudicatory hearing was not inadvertent. The trial court specifically asked counsel whether the respondent was going to testify and the respondent's counsel stated that the respondent would not testify. Further, the record does not indicate that the respondent's failure to testify was the result of counsel's medication. At the start of the final adjudicatory hearing on August 11, respondent's counsel explained that he was on medication. The trial court noted that counsel appeared lucid. Thereafter, counsel examined the respondent's witnesses and there is no indication in the record that he was impaired by his medication.

¶ 39 The respondent argues that the State would not have been unfairly prejudiced had the trial court reopened the proofs. However, the record indicates that the adjudicatory hearings had already spanned several months. The first adjudicatory hearing was held on June 10, 2015. By the time the respondent requested to reopen the proofs it was September 16, 2015, and the parties

were appearing for closing argument. Furthermore, the importance of the alleged evidence that the respondent could have provided is unclear. The respondent did not inform the trial court, or this court in his appellate brief, what he could have testified to that would have changed the trial court's findings of neglect.

¶ 40 Finally, there was good reason to deny the motion to reopen proofs. The respondent could well have provided testimony at the dispositional hearing and attempted to explain how his conduct would not affect his ability to parent and protect the minor. The respondent's own willful failure to appear at the dispositional hearing precluded him from presenting evidence on his own behalf. As such, the trial court did not abuse its discretion in denying the respondent's motion to reopen the proofs.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 43 Affirmed.