2016 IL App (3d) 140707-U

Order filed July 13, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re B.H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal No. 3-14-0707
Petitioner-Appellee,	)	Circuit No. 14-JA-77
	)	
v.	)	
	)	
Courtney H.,	)	The Honorable
	)	David J. Dubicki,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a juvenile neglect case, the appellate court held that: (1) the trial court had authority to appoint the Department of Children and Family Services (DCFS) as the guardian of the minor child, who had been found neglected and made a ward of the court, even though the trial court had also found that the child's father was dispositionally fit and that placement of the child outside of the father's custody was not necessary at that time; (2) the trial court's ruling, naming DCFS as the guardian of the minor in question, was not against the manifest weight of the evidence and did not constitute an abuse of discretion. The appellate court, therefore, affirmed the trial court's dispositional order.

¶ 2 The Department of Children and Family Services (DCFS) filed a juvenile neglect petition alleging that the minor child, B.H., was neglected and seeking to make the child a ward of the court. After hearings, the trial court found that the child was neglected, that the child's mother was dispositionally unfit, and that the child's father, respondent, Courtney H., was dispositionally fit. The child was made a ward of the court and was kept in respondent's custody, but DCFS was named as the child's guardian. Respondent appeals, challenging only the guardianship order. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Respondent and Asisha B. (mother) were the biological parents of the minor child, B.H., who was born in September 2012. In March 2014, DCFS filed a juvenile neglect petition in the trial court as to B.H. At the time of the petition, the mother and respondent were living together in an apartment (the family apartment) in Peoria, Illinois, and B.H. was living with them. The petition, as later amended, alleged that B.H. was a neglected minor because she had been subjected to an injurious environment in that: (1) B.H.'s siblings were wards of the court from previous proceedings; (2) the wardship of B.H.'s siblings was due in part to the mother's erratic behavior concerning a sibling's medical care; (3) the mother had acted very strangely on a particular date in January 2014 when she took B.H. to the hospital; (4) the mother suffered from mental health problems including bipolar and would not take prescribed daily medications; (5) as of the March 2014 permanency review hearing (in one of the other wardship cases), the mother was found not to be making reasonable efforts; and (6) as of the March 2014 permanency review hearing (in one of the other wardship cases), respondent's efforts were found to be mixed as he was not completing required drug tests and had broken a window during an argument. The

mother and respondent filed answers to the amended juvenile neglect petition and either stipulated to, or did not demand strict proof of, the allegations contained in the petition.

¶ 5 In April 2014, an order of protection was entered in the juvenile neglect case. The order of protection required, among other things, that; (1) B.H. reside with respondent; (2) all contact between the mother and B.H. be supervised by DCFS or respondent; and (3) respondent submit to random drug tests as previously ordered.

¶ 6 The following month, in May 2014, DCFS requested that the mother move out of the family apartment where she was living with respondent, B.H., and two of her other children (one of whom was also respondent's child) after the mother tested positive for cannabis in a random drug test. The mother moved in with respondent's sister and later told her therapist that she had been using cannabis for some time to calm herself. After the mother moved out of the family apartment, DCFS determined that all of the mother's visits with B.H. would be supervised by DCFS.

¶ 7 In June 2014, an adjudicatory hearing was held on the juvenile neglect petition. Both parties were present in court for the hearing with their attorneys. Based upon the parties' answers to the amended petition, some exhibits that were presented, and a proffer from the State, the trial court found that B.H. was a neglected minor.

¶ 8 A dispositional hearing was started immediately after the adjudicatory hearing was concluded and was completed on a later date in August 2014. Both parties were present in court for the dispositional hearing with their attorneys. A dispositional report and two addenda (collectively referred to as the dispositional report or the report) had been prepared for the hearing by the caseworker. Of relevance to this appeal, the dispositional report indicated that the mother had missed 3 of the approximately 12 random drug tests that she had been required to

take, had tested positive for cannabis in two of the tests, and had provided a diluted sample in a third test. The mother was still living outside of the family apartment; was participating in most of her services; and was generally cooperative with DCFS, although there were some concerns raised as to whether the mother was being truthful with DCFS about her cannabis use.[1]

¶ 9 As for respondent, the dispositional report indicated that he was living in the family apartment with B.H. and the two other children. Respondent was participating in services and was generally cooperative with DCFS.[2] Respondent had tested negative for drugs on all of the random drug tests that he had completed but had missed 4 of the approximately 11 drug tests that he had been required to take. Respondent had been arrested in May 2014 for disorderly conduct for failing to comply with police orders at the scene of an investigation, although respondent told the caseworker that he had not heard the police officer's command. In addition, in an oral status report that was given in court, the caseworker indicated that respondent had refused to comply with her request to turn over information about B.H.'s (and the other children's) babysitter.

¶ 10 With regard to B.H. and the other children, the dispositional report indicated that the children appeared to be bonded with both the mother and respondent. Respondent appeared to be very bonded with B.H. and the other children as well, was very devoted and caring toward the children, and his interactions with the children were always safe and appropriate. According to the caseworker, respondent had shown a good manner for talking to, and interacting with, the

[1, 2] The dispositional hearing was held at the same time as a permanency review hearing as to the other two children, one of whom was also respondent's child. Therefore, there was some indication in the report and some discussion during the proceedings as to whether respondent and the mother were completing the services that had previously been assigned.

children. B.H. appeared to be safe and happy in the family apartment with respondent, and the caseworker believed that it was in B.H.'s best interest to remain in respondent's care. The caseworker felt, however, that it would be beneficial for DCFS to be named the legal guardian of B.H. to allow daycare services to be provided to B.H., which would also assist respondent in obtaining employment. The caseworker recommended, therefore, that respondent be found fit and that DCFS be named as B.H.'s guardian with the right to place B.H.

¶ 11 The guardian *ad litem* (GAL) reported to the trial court at the dispositional hearing that respondent was allowing the mother to have unapproved contact with the children, which presumably included B.H. as well. The GAL cited to a few specific instances, although there is no official report of those instances in the record.

¶ 12 At the conclusion of the hearing, the trial court found that the mother was dispositionally unfit and that respondent was dispositionally fit. The trial court made B.H. a ward of the court and found that it was in B.H.'s best interest for DCFS to be appointed as B.H.'s guardian with the right to place B.H. In making that finding, the trial court pointed out that the court's orders were directives, not recommendations, and that respondent was required to follow those orders. The trial court commented that respondent was not fully cooperating with DCFS and pointed to the respondent's refusal to provide information to the caseworker about the babysitter. In addition, the trial court noted that there was evidence that strongly suggested that respondent had continued to permit the mother to have unsupervised contact with the children after the mother was removed from the family apartment. The trial court ruled, however, that placement outside of the home was not necessary at that time and allowed respondent to retain custody of B.H. The trial court ordered that respondent was not allowed to supervise the mother's visits with B.H.; that respondent was not to allow the mother to have any contact with B.H., other than the

mother's scheduled visits with the minor; and that respondent was to complete random drug tests when requested. Respondent filed this appeal to challenge the trial court's guardianship ruling.

¶ 13 ANALYSIS

¶ 14 On appeal, respondent argues that the trial court erred in its dispositional order by appointing DCFS as the guardian of B.H. despite determining that respondent was dispositionally fit and that placement of B.H. outside of respondent's custody was not necessary at that time. Respondent asserts that: (1) the trial court did not have authority to appoint DCFS as the guardian of B.H. because the trial court did not first find that respondent was unfit, unwilling, or unable to care for B.H.; and (2) under the present circumstances, the trial court's dispositional order appointing DCFS as B.H.'s guardian was against the manifest weight of the evidence and constituted an abuse of discretion. Respondent asks, therefore, that we reverse that portion of the trial court's dispositional order that named DCFS as B.H.'s guardian. The State disagrees with respondent's assertions and argues that the trial court's dispositional order was proper and should be affirmed.

¶ 15 Under the Juvenile Court Act of 1987 (Act), once a trial court adjudicates a minor to be neglected, the trial court must hold a dispositional hearing. 705 ILCS 405/2-21, 2-22 (West 2014); *In re A.S.*, 2014 IL App (3d) 130163, ¶ 22. At the dispositional hearing, the trial court must determine whether to make the minor a ward of the court and, if so, the appropriate disposition for the minor. 705 ILCS 405/2-22(1) (West 2014). There are several different types of dispositions that are authorized under the statute for a minor who has been made a ward of the court. See 705 ILCS 405/2-23, 2-27 (West 2014). The overriding concern in determining the appropriate disposition is the minor's best interest. See *In re E.L.*, 353 Ill. App. 3d 894, 897 (2004). A trial court's dispositional order will not be reversed on appeal unless its factual

findings were against the manifest weight of the evidence or it committed an abuse of discretion by selecting an inappropriate dispositional order. *A.S.*, 2014 IL App (3d) 130163, ¶ 21.

¶ 16 In the present case, after having thoroughly reviewing the record, we find that the trial court's dispositional order was proper. The Act specifically recognizes that the trial court may appoint DCFS as the guardian of a minor who has been made a ward of the court. See 705 ILCS 405/2-23(1)(c) (West 2014); *In re M.P.*, 408 Ill. App. 3d 1070, 1073 (2011). Although respondent argues that before appointing DCFS as a minor's guardian, the trial court must first find that the parent in question is unfit, unwilling, or unable to care for the minor, no such requirement is contained in section 2-23 of the Act, the section that allows the trial court to issue a dispositional order continuing the minor in the custody of his or her parents. See 705 ILCS 405/2-23(1)(a)(1) (West 2014); *E.L.*, 353 Ill. App. 3d at 898. Rather, a finding that the parent is unfit, unwilling, or unable to care for the minor must be made when custody of the minor is being placed with DCFS. See 705 ILCS 405/2-27(1)(d) (West 2014); *E.L.*, 353 Ill. App. 3d at 898. Furthermore, this court has previously recognized that the custody and guardianship of a minor may be split by the trial court. See, *e.g.*, *E.L.*, 353 Ill. App. 3d at 898; *M.P.*, 408 Ill. App. 3d at 1074. The Act also recognizes that such an arrangement is proper. See 705 ILCS 405/1-3(8)(c) (West 2014) (stating that the guardianship of a minor includes the legal custody of the minor except where the legal custody has been vested in another person or agency); *M.P.*, 408 Ill. App. 3d at 1074. Thus, there is no question that the trial court had the legal authority to appoint DCFS as the guardian of the minor under the facts of the present case and that the trial court was not required to first find that respondent was unfit, unwilling, or unable to care for B.H. See 705 ILCS 405/1-3(8)(c), 2-23(1)(c), 2-27(1)(d) (West 2014); *E.L.*, 353 Ill. App. 3d at 898; *M.P.*, 408 Ill. App. 3d at 1073-74.

¶ 17 Respondent's reliance upon the decision in *In re Ta.A.*, 384 Ill. App. 3d 303, 306-08 (2008), to support a conclusion to the contrary is misplaced. *Ta.A.* involved a situation where the custody of the minor was placed with DCFS. See *id.* Ta.A. did not involve a situation, such as in the present case, where the trial court kept custody of the minor with the parent. See *id.* Our ruling in *Ta.A.*, therefore, is not applicable here. See *id.*

¶ 18 Finally, we also conclude under the facts of the present case, that the trial court's findings were not against the manifest weight of the evidence and that its dispositional order did not constitute an abuse of discretion. Although the trial court found the respondent fit at the dispositional hearing, it noted its concerns, which were supported by the evidence presented, that respondent had been allowing B.H. (or the other children involved) to have unauthorized contact with the mother of the children and that respondent had not been fully cooperative with DCFS. With those concerns duly noted and supported, the trial court was well within its discretion to appoint DCFS as the guardian of B.H. We, therefore, reject respondent's assertion to the contrary.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 21 Affirmed.