2016 IL App (3d) 150392-U

Order filed February 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

In re M.B.E.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0392
	)	Circuit No. 15-JA-14
v.	)	
	)	
Brittany E.,	)	Honorable
	)	Albert L. Purham, Jr.,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE MCDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's findings that the minor was neglected and that respondent was dispositionally unfit were not against the manifest weight of the evidence. (2) The trial court did not err in ordering services without a DCFS service plan. (3) The trial court did not abuse its discretion in denying respondent's request for a continuance.

¶ 2 The minor, M.B.E., was adjudicated neglected. After a dispositional hearing, the respondent mother was found to be unfit. Respondent appeals the findings of neglect and

unfitness. Respondent also challenges the trial court's continuance denial and its decision to order services absent a Department of Children and Family Services (DCFS) service plan. We affirm.

¶ 3 FACTS

¶ 4 Respondent, Brittany E., is the mother of minor M.B.E. On January 16, 2015, DCFS filed a juvenile petition, alleging that M.B.E. was neglected due to an injurious environment (705 ILCS 405/2-3 (West 2014)). Specifically, the petition alleged that M.B.E.'s environment was injurious to his welfare as: (1) M.B.E.'s sibling had been under DCFS guardianship since January 2013 and could not be returned to respondent; (2) respondent had not completed services that would have resulted in the return home of M.B.E.'s sibling; (3) respondent continued to use cannabis while pregnant with M.B.E. and under orders of the court; (4) the basis of the juvenile petition for M.B.E.'s sibling included medical neglect, a history of domestic violence, and the father's criminal history; (5) M.B.E.'s father had a criminal record; and (6) respondent was previously indicated by DCFS in May 2012 for failure to thrive.

¶ 5 An adjudicatory hearing was held, where the only portion of the petition that respondent contested was that she had not completed her services. The State presented evidence of M.B.E.'s sibling's neglect case. As part of that case, respondent was ordered to complete drug drops. From April 2014 to January 2015 she was scheduled to complete 44 drug drops, but missed 38 of them. Of the six that she completed, three were positive and three were negative. She had completed one outpatient service, but was discharged from another service for failure to participate.

¶ 6 M.B.E.'s newborn discharge summary stated respondent tested positive for cannabis. M.B.E.'s umbilical cord also tested positive for cannabis. Respondent was receiving counseling,

but attended inconsistently, lacked motivation, and was not fully engaged. The therapist suggested that the counseling be discontinued as it was not providing any benefit to respondent because her attendance was inconsistent. The court found the allegations in the petition proven, determined the environment was injurious to M.B.E., and set the matter for a dispositional hearing.

¶ 7 The record includes a service plan dated April 7, 2015. The service plan provided that respondent was to: (1) obtain a substance abuse assessment and cooperate with the resulting recommendations, including random drug screens; (2) participate in the parenting class she enrolled in and demonstrate what she learned; (3) obtain a mental health assessment and participate in counseling; and (4) obtain housing and maintain a source of income. Further, respondent was to cooperate with court orders and the agencies, not discontinue services without caseworker approval, call within 24 hours to cancel any appointments, and keep the agencies informed of any changes to her address or phone number.

¶ 8 The dispositional hearing was held on May 27, 2015. A caseworker from Children's Home and Aid prepared a dispositional report for the hearing. The report was based in part on the caseworker's own interview with respondent, as well as integrated assessments from 2013 and February 2015. The caseworker did not attach the integrated assessments, but said that she would provide them within seven days. Respondent's attorney initially asked for a continuance because the caseworker's dispositional report was not given to the parties until a day or two before the hearing, and she had not yet received current DCFS service or visitation plans. However, respondent's attorney subsequently stated:

> "Whatever your Honor decides to do. I am not going to put on evidence, your Honor. It's only argument. I would have liked to have had more time. I would

> have liked to have the service plan and the visitation plan, which I was completely entitled to, a long time ago, but it isn't–it didn't happen. *** If you want to go forward, we can go forward."

The court decided to proceed, but asked the caseworker to give the parties the visitation and service plans within seven days.

¶ 9 In her report, the caseworker said that respondent reported she was homeless and had no income. She had been residing with friends, although she moved in with her sister on a transient basis before the dispositional hearing. She was discharged from counseling at Family Core due to poor attendance and failure to comply with treatment goals. She was told that she could not resume her therapy services until she had negative drug screens for two consecutive months and completed outpatient substance abuse counseling.

¶ 10 Respondent completed outpatient substance abuse treatment in March 2014 and was re-enrolled in February 2015. She tested positive for marijuana in April, May, November and December of 2014, and January 2015. She did not consistently participate in her drug screenings. M.B.E. was born with cannabis in his system. Starting in January 2015, respondent was supposed to call the agency to confirm random drug screens. She did not consistently call in or screen from January to May 2015, when the dispositional report was created, and was therefore considered positive for those months.

¶ 11 Respondent successfully completed a parenting class in 2013. In January 2015, after the birth of M.B.E., respondent took the initiative to enroll in another parenting class. She went to two classes in January, but did not attend in February. She was expected to participate in family therapy at Family Core to address appropriate interaction, but she was discharged from Family

Core and was unable to complete the therapy. Respondent was scheduled to have supervised visits twice a week. The caseworker said respondent inconsistently participated in these visits.

¶ 12 Both the caseworker and the integrated assessment screener noted that respondent was defensive and vague, refused to answer questions, and reported contradicting information. The caseworker noted that, in the April 7, 2015, service plan, respondent's objectives were to: (1) participate in and successfully complete mental health counseling; (2) complete a substance abuse assessment, follow through with all treatment recommendations, and maintain an alcohol and substance-free lifestyle; (3) participate in and successfully complete a parenting class; and (4) obtain housing and maintain a source of income. The caseworker stated that respondent was thus far unsatisfactory in each of these areas.

¶ 13 The caseworker recommended that respondent be found unfit, guardianship be awarded to DCFS, and the court set the return home goal for 12 months. The caseworker said respondent expressed that she understood she needed to complete random drug screens and was willing to engage in the recommended services to gain custody of M.B.E., however, the caseworker noted that "her actions do not demonstrate her willingness to comply."

¶ 14 The State agreed with the caseworker's assessment and recommended that respondent's services include counseling, a drug and alcohol assessment, parenting classes, drug testing, and a new psychological evaluation. The State further commented that the court could order services, just not specific services.

¶ 15 The guardian *ad litem* for M.B.E. recommended respondent be found unfit and that M.B.E. be made a ward of the court.

¶ 16 Upon hearing argument, the court made M.B.E. a ward of the court and appointed a guardian. The court further found respondent unfit, stating:

"I understand marijuana is being decriminalized and it's not a controlled substance, but kind of like alcohol, you're not really supposed to be doing that while you're pregnant. ***

You're not engaging in things that you're supposed to be doing, like substance abuse treatment and counseling, domestic violence treatment."

The court further entered services consistent with the April 7, 2015, service plan, specifically that respondent participate in: (1) counseling; (2) a drug/alcohol assessment; (3) a parenting class; and (4) drug testing.

¶ 17 ANALYSIS

¶ 18 On appeal, respondent argues that: (1) the trial court's findings of neglect and dispositional unfitness were against the manifest weight of the evidence; (2) the trial court committed reversible error when it ordered services at the dispositional hearing in the absence of a DCFS service plan; and (3) the trial court abused its discretion in denying respondent's request for a continuance of the dispositional hearing. We reject each of these contentions.

¶ 19 I. Neglect and Unfitness

¶ 20 Respondent contends that the trial court's findings of neglect and dispositional unfitness were against the manifest weight of the evidence. Respondent's entire argument in support of this contention consists of this one meager paragraph:

"The trial court's decisions, finding the minor neglected and the Respondent mother to be an unfit parent, based upon the fact that she admittedly used marijuana on at least one occasion, during her pregnancy, is against the manifest weight of the evidence. The State introduced no evidence that the minor was harmed in any way by the mother's use of cannabis on at least one occasion,

> during her pregnancy, or that the mother's use of marijuana caused her to be so impaired that she was unable to properly care for the minor. So, this alone cannot be the basis for a finding of neglect by reason of an injurious environment or the basis to find the Respondent mother to be an unfit parent. 'Although isolated incidents of a parent's drug use do not necessarily pose a risk to a child, obviously an ongoing pattern of substantial abuse can create an injurious environment.' *In re Z.Z.*, 312 Ill. App. 3d 800 (2d Dist. 2000)."

¶ 21 We begin by reviewing the trial court's neglect finding. Respondent does not challenge the fact that she consistently used marijuana. Respondent merely asserts that the neglect finding must be overturned in light of the State's purported failure to introduce any evidence of *actual* harm to M.B.E. as a result of her consistent marijuana usage. Respondent's proposition ignores our supreme court's consistent holding that the term injurious environment is an amorphous concept. *In re A.P.*, 2012 IL 113875, ¶ 22; *In re Arthur H.*, 212 Ill. 2d 441, 477 (2004). Moreover, respondent has failed to identify any authority supporting her specific proposition that the State must establish *actual* harm to the minor. Instead, respondent's *sole* cited authority (*In re Z.Z.*, 312 Ill. App. 3d 800) actually supports the trial court's neglect finding in the instant case. While the court in *In re Z.Z.* acknowledged that isolated incidents of a parent's drug usage do not necessarily pose a danger to a child, an ongoing pattern of substance abuse can create an injurious environment. *Id.* at 805. Ultimately, the court affirmed the trial court's finding of neglect. *Id.* at 806.

¶ 22 Here, the record clearly shows that respondent's drug use did not merely consist of isolated incidents. Evidence was presented at the adjudicatory hearing that respondent was scheduled to complete 44 drug drops, but missed 38 of them. Of the six that she completed,

three were positive. M.B.E.'s newborn discharge summary stated respondent tested positive for cannabis. M.B.E.'s umbilical cord also tested positive for cannabis. While this evidence alone is enough to support the trial court's neglect finding, we also note that respondent did not challenge five of the six allegations contained within the neglect petition. Specifically, (1) M.B.E.'s sibling had been under DCFS guardianship since January 2013 and could not be returned to respondent; (2) respondent continued to use cannabis while pregnant with M.B.E. and under orders of the court; (3) the basis of the juvenile petition for M.B.E.'s sibling included medical neglect, a history of domestic violence, and the father's criminal history; (4) M.B.E.'s father had a criminal record; and (5) respondent was previously indicated by DCFS in May 2012 for failure to thrive. Finally, we reference the State's evidence that respondent was discharged from one service for failure to participate, and also inconsistent in attending her counseling sessions.

¶ 23 Accordingly, the trial court's finding of neglect was not against the manifest weight of the evidence.

¶ 24 Turning to the question of unfitness, we are extremely troubled by the fact that respondent has failed to cite *any* authority with regard to this issue (the above cited case, *In re Z.Z.*, 312 Ill. App. 3d 800, dealt solely with the issue of neglect). It is well settled that the failure to cite authority in support of an argument results in its forfeiture. *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 280 (2009); *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 10 (2009); *Fortech, L.L.C. v. R.W. Dunteman Co., Inc.*, 366 Ill. App. 3d 804, 818 (2006).[1] We deem the issue of unfitness forfeited.

[1]Although these cases discuss waiver, we note—as has the Illinois Supreme Court itself—that there is a distinct difference between waiver and forfeiture. See *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 320 n.2 (2008) ("While waiver is the voluntary

¶ 25 Even if we were to excuse respondent's forfeiture, the record supports the finding of dispositional unfitness. Both respondent's caseworker and the guardian *ad litem* for M.B.E. recommended that respondent be found unfit. While respondent did complete an outpatient substance abuse program in 2014 and a parenting class in 2013, she was discharged from other therapeutic programs and also inconsistent in attending counseling sessions. Respondent did not consistently participate in drug screenings. M.B.E. was born with cannabis in his system. Respondent failed to consistently participate in supervised visits with M.B.E. Respondent received grades of unsatisfactory in relation to the four objectives contained within the April 7, 2015, service plan. Specifically, she did not (1) participate in and successfully complete mental health counseling; (2) complete a substance abuse assessment, follow through with all treatment recommendations, and maintain an alcohol and substance-free lifestyle; (3) participate in and successfully complete a parenting class; and (4) obtain housing and maintain a source of income.

Accordingly, the trial court's finding of dispositional unfitness was not against the manifest weight of the evidence.

¶ 26 II. Services without a Service Plan

¶ 27 Respondent argues that the trial court committed reversible error when it ordered services at the dispositional hearing in the absence of a DCFS service plan. The State argues that there was a service plan in place at the time of the dispositional hearing, and that respondent was working on completing the services in the plan.

---

relinquishment of a known right, forfeiture is the failure to timely comply with procedural requirements. [Citations.] These characterizations apply equally to criminal and civil matters."). Thus the relinquishment of an argument through failure to cite authority in support of that argument is properly termed a forfeiture of that argument.

¶ 28 The record shows that there was a service plan dated April 7, 2015, which would have been prior to the May 27, 2015, dispositional hearing. As such, we find that there was a service plan in place at the time of the dispositional hearing. This is further made clear by the fact that the services the court ordered at the dispositional hearing held on May 27 are consistent with the service plan entered on April 7. Therefore, there was no error.

¶ 29 Even accepting respondent's argument that the court committed error by ordering services without a service plan, the error was harmless. "An error may be harmless if it did not contribute to the outcome of an action, if overwhelming evidence supports the order of the trial court, or if the error pertained to evidence that was merely cumulative or corroborative of other evidence." *In re Kenneth F.*, 332 Ill. App. 3d 674, 680 (2002). Here, the overall outcome of the action was that respondent was found unfit at the dispositional hearing. Whether or not the court ordered services without a service plan would not have had an effect on respondent's fitness. As discussed above, the record supports the trial court's unfitness finding. "An error that prejudices no one should not prevent children, who are the objects of these proceedings, from attaining some level of stability in their lives." *Id.* at 679-80. The services that the court ordered were for the benefit of M.B.E. and also respondent herself.

¶ 30 III. Denial of Continuance

¶ 31 Respondent argues that the trial court abused its discretion by denying her request for a continuance of the dispositional hearing.

¶ 32 Initially, we deem this argument waived. "A waiver is a voluntary relinquishment of a known right, claim or privilege." *Vaughn v. Speaker*, 126 Ill. 2d 150, 161 (1988). While respondent's attorney stated that she would have preferred to have had more time, she expressly

acquiesced to moving forward with the dispositional hearing. Specifically, she stated: "If you want to go forward, we can go forward."

¶ 33 Even if we were to ignore the doctrine of waiver, we emphasize that "[t]here is no absolute right to a continuance." *In re D.P.*, 327 Ill. App. 3d 153, 158 (2001). The denial of a continuance may only serve as grounds for reversal if the complaining party has been prejudiced by the denial. *Id.* (citing *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999)). Respondent has failed to establish prejudice. Again, the record supports the trial court's finding of dispositional unfitness.

¶ 34 CONCLUSION

¶ 35 The judgment of the circuit court of Peoria County is affirmed.

¶ 36 Affirmed.