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2016 IL App (4th) 150992-U
NO. 4-15-0992
IN THE APPELLATE COURT
OF ILLINOIS

FILED
May 17, 2016
Carla Bender
4th District Appellate
Court, IL

FOURTH DISTRICT

In re: A.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 15JA21
CODY GASKIN,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht concurred in the judgment.
Justice Appleton specially concurred.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which made the minor child a ward of the State and placed her in the custody and guardianship of the Department of Children and Family Services.
- ¶ 2 On March 19, 2015, the State filed a petition for adjudication of wardship, alleging that A.W. (born August 31, 2012) was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2014)). The petition alleged that A.W.'s parents—P.W. (we refer to the mother by her initials because the facts of this case include reference to a past sexual assault committed against her) and respondent, Cody Gaskin—had exposed A.W. to harm by, *inter alia*, exposing her to a registered sex offender. After a shelter-care hearing conducted later that day, the trial court (1) found that an immediate and urgent necessity required the placement of A.W. into shelter care and (2) granted temporary custody of A.W. to the Department of Children and Family Services (DCFS). In April 2015, the

court entered an adjudicatory order finding that A.W. was neglected. In June 2015, the court entered a dispositional order, making A.W. a ward of the court and appointing DCFS as her guardian.

¶ 3 In August 2015, respondent's mother, Julie Duvall, filed a petition for leave to intervene, explaining that respondent was a disabled adult and that she was his guardian. Duvall also filed a motion to vacate the adjudicatory and dispositional orders, arguing that she should have been present at the hearings that led to those orders. The trial court vacated both orders, and the State filed a supplemental petition for adjudication of neglect, raising the same allegations as the March 2015 petition.

¶ 4 In October 2015, the trial court held another adjudicatory hearing, at which Duvall was present. In November 2015, the court adjudicated A.W. neglected. In December 2015, after a dispositional hearing, the court again made A.W. a ward of the court and appointed DCFS as her guardian.

¶ 5 Respondent appeals, arguing that the (1) trial court's finding that respondent was unfit and unable was against the manifest weight of the evidence and (2) court abused its discretion by placing A.W. with DCFS instead of with respondent. We affirm.

¶ 6 I. BACKGROUND

¶ 7 In this case, the trial court held two rounds of adjudicatory and dispositional hearings. After the initial proceedings, Duvall filed a motion to vacate those proceedings, explaining that she was respondent's guardian and that she had not been notified of or present at the initial proceedings. The court granted Duvall's motion. The State then initiated subsequent proceedings, which included new adjudicatory and dispositional hearings. We briefly describe both the initial and subsequent hearings.

¶ 8

A. The Initial Proceedings

¶ 9

1. *The Petition for Adjudication of Wardship*

¶ 10 On March 19, 2015, the State filed a petition for adjudication of wardship, setting forth four counts of neglect as to A.W. pursuant to section 2-3(1)(b) of the Juvenile Act (705 ILCS 405/2-3(1)(b) (West 2014)). Specifically, the State alleged that A.W. was neglected because (1) A.W. was exposed to a registered sex offender; (2) A.W. had unsupervised contact with a registered sex offender; (3) respondent and P.W. provided insufficient supervision; and (4) respondent and P.W. exposed A.W. to extreme clutter.

¶ 11

2. *The Shelter-Care Hearing and Temporary Custody Order*

¶ 12 The trial court held a shelter-care hearing on March 19, 2015. Respondent and P.W. stipulated to granting DCFS temporary custody of A.W. The court found a factual basis to support the parties' stipulation and therefore granted DCFS temporary custody of A.W.

¶ 13

3. *The Adjudicatory Hearing and Order*

¶ 14 Following an April 27, 2015, adjudicatory hearing, the trial court found that A.W. was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Act (705 ILCS 405/2-3(1)(b) (West 2014)).

¶ 15

4. *The Dispositional Hearing and Order*

¶ 16 Following a June 2, 2015, dispositional hearing, the trial court made A.W. a ward of the court and maintained DCFS as her guardian.

¶ 17

B. Duvall's Petition for Leave To Intervene and Motion To Vacate

¶ 18 On August 19, 2015, Duvall filed a petition for leave to intervene, stating that she was respondent's guardian and requesting permission to intervene in the proceedings. Attached to Duvall's motion was a July 2013 court order (1) finding that respondent was a disabled person

who suffered from autism, sensory integration disorder, and "other disabilities"; and (2) appointing Duvall as respondent's guardian.

¶ 19 In September 2015, Duvall filed a motion to vacate the adjudicatory and dispositional orders. At a hearing later that month, the trial court granted Duvall's motion and vacated the April 2015 adjudicatory order and the June 2015 dispositional order. The court explained that, had it known that respondent had a guardian, the court would not have entered the adjudicatory and dispositional orders because the guardian was not present at those respective hearings.

¶ 20 C. The Subsequent Adjudicatory and Dispositional Proceedings

¶ 21 1. *The Supplemental Petition for Adjudication*

¶ 22 On September 21, 2015, the State filed a supplemental petition for adjudication of wardship, which was identical to the original petition except that it included information describing Duvall as respondent's guardian.

¶ 23 2. *The Adjudicatory Hearing and Order*

¶ 24 On October 26, 2015, the trial court conducted an adjudicatory hearing. DCFS investigator Heather Forrest testified that on March 17, 2015, she saw A.W. in the care of her grandmother—Georgia W.—and Grover Bennett. Forrest knew that Bennett had sexually assaulted P.W. in the past.

¶ 25 DCFS investigator Sheree Foley testified that on March 18, 2015, she spoke to P.W. at P.W.'s home. P.W. told Foley that Georgia and Bennett lived with her but that A.W. did not because the home was "disgusting" and unfit for A.W. P.W. admitted letting Georgia take care of A.W. but denied knowing that A.W. was with Bennett. Foley testified that she entered P.W.'s home but had to leave because the smell inside was overwhelming. Foley described the inside of the home as "horrendous," with crates of dogs, dog feces on the floor, and the presence

of clutter and trash. P.W. gave Foley the address of her friend, Vernon, where P.W. said A.W. was staying.

¶ 26 Foley testified further that she went to Vernon's apartment to find A.W. The apartment was "extremely dirty and foul" and not fit for a child. However, A.W. was not at the apartment. Foley returned to P.W.'s house and told her she needed to find A.W. and bring her to the DCFS office within an hour. Later that afternoon, P.W. brought A.W. to Foley at the DCFS office. A.W. was a "little bit dirty *** but al[l]right." P.W. told Foley that she thought that respondent was A.W.'s father but that respondent had never been a part of A.W.'s life and P.W. did not want him to be. Foley confirmed that Bennett was a registered sex offender who had been previously indicated by DCFS for sexually offending against P.W.

¶ 27 The trial court took judicial notice of Bennett's criminal conviction for aggravated criminal sexual abuse to P.W.

¶ 28 After the close of evidence, the trial court found A.W. neglected on all four counts alleged by the State. On November 2, 2015, the court entered a written adjudicatory order adopting its finding that A.W. was neglected on all four counts.

¶ 29 *3. The Dispositional Hearing and Order*

¶ 30 On December 16, 2015, the trial court held a dispositional hearing. Lutheran Social Services of Illinois supervisor Mallory Fiedler testified that she observed one visit between A.W. and respondent. In addition, she received reports from caseworkers who had observed other visits. Fiedler testified that, to her knowledge, the interactions between A.W. and respondent were always appropriate. The visits between A.W. and respondent were required to be supervised, and Duvall was present during all of the visits.

¶ 31 The trial court also considered an August 2015 report completed by a caseworker

with Lutheran Social Services of Illinois. According to the report, respondent had been living in his own house for the past 9 to 12 months. The home was neat, clean, and appropriately furnished. Respondent received government benefits to help pay his rent. The report provided further that respondent had completed school through the tenth grade and intended to earn a high-school equivalency diploma. He had a good relationship with his mother and stepfather and enjoyed near-daily contact with them. Respondent had a fiancée and named his grandmother and a counselor from Community Choices as sources of social support.

¶ 32 The report noted further that when respondent was 18 or 19 years old, he began a six-month relationship with P.W. He described P.W. as manipulative and controlling and stated that their relationship ended while P.W. was pregnant with A.W. After A.W. was born, P.W. refused to allow respondent to conduct a paternity test to determine whether A.W. was his child. P.W. allowed respondent to see A.W. only twice during the first six months of A.W.'s life. Prior to the proceedings in this case, respondent had not seen A.W. since she was six months old. In June 2015, results of a paternity test established that respondent was A.W.'s father. Since DCFS was named temporary guardian, respondent had attended all available visits with A.W. and acted appropriately with her.

¶ 33 The report explained further that respondent was performing odd jobs for his stepfather's construction company. Respondent stated that he wanted to be a farmer in the future. He received Supplemental Security Income as a result of learning and other disabilities, in addition to "LINK card assistance." He had no criminal history or problems with drugs or alcohol.

¶ 34 Respondent had been diagnosed with ADHD, autism-spectrum disorder, pervasive developmental disorder, sensory integration disorder, and anxiety disorder. He was attending counseling to work on home skills and his ability to cope with anxiety. Respondent stated

that in the future, he wanted "[t]o be successful; to have a family, and to be something everyone is proud of." Respondent stated that he was willing to participate in whatever services necessary to be reunited with A.W. The reporter concluded that the chances were good that respondent could be reunited with A.W. within the next 5 to 12 months.

¶ 35 After the dispositional hearing, the trial court determined that both respondent and P.W. were unfit and unable to care for, protect, train, and discipline A.W. The court found that respondent was initially misled as to whether he was A.W.'s father. The court explained that respondent's having a guardian of his own did not preclude him from being a custodial parent to A.W. However, the court cited a November 6, 2015, report, which held that respondent needed support with (1) social skills, (2) managing money, (3) managing medications, (4) community access, and (5) keeping appointments. The court also noted that respondent had not yet had any unsupervised visitation with A.W. The court found that respondent needed "assistance and time to develop a care [*sic*] relationship" with A.W. but that, based on the evidence, such a relationship was developing.

¶ 36 As a result of those findings, the trial court removed custody and guardianship from respondent and P.W. The court adjudged A.W. a ward of the court and appointed DCFS as her guardian. As noted, DCFS had been A.W.'s temporary guardian since the March 2015 shelter-care hearing. In addition, the court authorized respondent to have up to 6 hours of unsupervised visitation with A.W. during any 24-hour period. On December 28, 2015, the trial court entered a written dispositional order, incorporating the findings made after the December 16, 2015, hearing.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Respondent argues that the (1) trial court's finding that respondent was unfit and unable to parent A.W. was against the manifest weight of the evidence and (2) court abused its discretion by placing A.W. with DCFS instead of with respondent. We disagree with both of respondent's contentions.

¶ 40 A. Statutory Language and Standard of Review

¶ 41 In any proceeding under the Juvenile Act, the paramount consideration is the best interest of the child. *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 42 Section 2-22(1) of the Act, which governs dispositional hearings, states as follows:

"At the dispositional hearing, the 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, if he is to be 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 2014).

¶ 43 Under section 2-27 of the Juvenile Act, the trial court may appoint DCFS as guardian of the minor if it determines that the parents are unfit or unable, for reasons other than financial circumstances alone, "to care for, protect, train[,] or discipline the minor or are unwilling to do so, and the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of *** her parents ." 705 ILCS 405/2-27(1) (West 2014). The court's decision will be reversed only if the findings of fact are against the manifest weight of the evidence or if the court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 44 B. Trial Court's Finding that Respondent Was Unable and Unfit

¶ 45 The trial court found that, although respondent displayed significant potential to become an able and fit parent, he had not yet reached that potential as of the dispositional hearing. The court adopted the dispositional report's findings that respondent still needed support with (1) social skills, (2) managing money, (3) managing medications, (4) community access, and (5) keeping appointments. The court expressed confidence that respondent would become fit and able in the future if he continued working toward the goal of gaining custody of A.W. The court granted respondent unsupervised visitation but nevertheless found that respondent was unable and unfit to parent A.W.

¶ 46 We conclude that the trial court's decision was not against the manifest weight of the evidence. The court relied on evidence that respondent still needed support with daily living skills before he would be fit and able to be A.W.'s sole guardian. In addition, respondent had never had unsupervised contact with A.W. We agree with respondent that his having a guardian of his own does not prevent him from being awarded guardianship of A.W. We also agree with the court that if he maintains his current progress, respondent may be fit and able to be A.W.'s guardian in the near future. However, the court's finding that respondent was currently unfit and unable was not against the manifest weight of the evidence.

¶ 47 C. Trial Court's Decision To Appoint DCFS as A.W.'s Guardian

¶ 48 The trial court's decision to place A.W. with DCFS was not an abuse of discretion. This decision was interrelated to the court's decision finding respondent unable and unfit. Although respondent has made significant progress toward being awarded custody of A.W., the court was within its discretion to decide that respondent had not yet reached that goal. Respond-

ent has not suggested any alternative placement—other than in his own custody—that would be in the best interest of A.W.

¶ 49 We affirm the trial court's decision with the expectation that the court is aware of the progress that respondent is making. We hope that respondent will continue to make such progress and may be able to be A.W.'s custodian in the future. We commend respondent, Duvall, the caseworkers and psychologists, and the trial court for their care and attention in this case.

¶ 50 III. CONCLUSION

¶ 51 For the foregoing reasons, we affirm the decision of the trial court.

¶ 52 Affirmed.

¶ 53 JUSTICE APPLETON, specially concurring.

¶ 54 While I wholeheartedly concur in the majority disposition, I write separately to voice a concern that the trial court and the DCFS must continue the monitoring of this case to provide expanded visitation between respondent and the child as respondent's capability increases and the maturing of the child will allow.