2016 IL App (4th) 160324-U

NO. 4-16-0324

FILED
September 28, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 15JA100
CHRISTOPHER LOUGHLIN,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding in its dispositional order that the respondent father was fit to care for his minor child but unable to do so due to a lack of relationship between the two was not against the manifest weight of the evidence.

¶ 2 Respondent, Christopher Loughlin, appeals the trial court's dispositional order, which made his minor daughter a ward of the court and appointed the Department of Children and Family Services (DCFS) temporary guardian and custodian of the minor. Respondent claims the court's order finding him fit but unable was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2015, the State filed a petition for adjudication of neglect of K.L., born July 10, 2003, alleging her environment was injurious to her welfare when in the care of (1) her mother, who has unresolved mental-health issues (currently hospitalized for mental-health

treatment); and (2) her father, respondent, who was determined to be unfit in a previous juvenile court case (McLean County case No. 12-JA-92) for failing to participate in a substance-abuse or domestic-violence assessment. The State also alleged respondent failed to establish a relationship with K.L. during the pendency of the previous case by failing to demonstrate his ability to safely address her special needs, creating a risk of harm to the minor. We note K.L.'s mother is not a party to this appeal.

¶ 5 Apparently, after K.L.'s mother and respondent divorced in California, sometime around 2007, the mother absconded with K.L. Respondent, who currently still resides in California, had no idea where they had gone until he was notified by either DCFS or the Baby Fold, the private agency assigned by DCFS to administer the case, of the juvenile proceedings in the previous case in October 2012. At that time, K.L. was taken into protective custody due to the mother's mental health. The previous juvenile case was closed in April 2014. The record before us does not include the record from McLean County case No. 12-JA-92.

¶ 6 In September 2015, the mother experienced a severe mental-health episode and was hospitalized. K.L. was again taken into protective custody. At the shelter-care hearing, the State notified the trial court the mother was not allowed to speak with anyone because of her delusional state. The State also asked the court to take judicial notice of case No. 12-JA-92. Respondent, who appeared by telephone and through counsel, asked the court allow K.L. to come to California to live with him. The court denied the request, finding respondent was declared unfit when the previous case was closed. The court ordered K.L. placed in the temporary custody of DCFS.

¶ 7 Respondent filed a motion to dismiss the petition, asking again that K.L. be allowed to move to California, into his care and custody. Respondent asked the trial court to

consider a November 2013 Interstate Compact Study performed on his California home during the previous case. In January 2014, the social worker prepared a report based upon the November 2013 study and approved respondent's home for K.L.'s placement. Respondent argued the Full Faith and Credit Clause of the U.S. Constitution was an "affirmative matter which would avoid the legal effect" of the allegations in the neglect petition sufficient to support an order dismissing the petition under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)). After a hearing, the court denied respondent's motion again based upon his earlier status as an unfit parent.

¶ 8 The State filed a first supplemental petition for adjudication of wardship, alleging K.L. was dependent because she was without proper care while her mother was in the hospital for treatment. At the hearing on November 23, 2015, the mother admitted the allegation of the first supplemental petition. As a result, the State dismissed the original petition. The trial court entered an order of adjudication, finding K.L. dependent with "no relative available to care for the minor due to her behavior issues precipitated by autism."

¶ 9 On December 30, 2015, the trial court conducted a dispositional hearing. Respondent appeared by telephone and through counsel. Respondent testified both juvenile cases were opened due to the mother's mental health. He said his 17-year-old son, Kyle, and his long-time girlfriend, Vicki Tabernini, live with him. He has had primary custody of Kyle for over 16 years as a result of a contested hearing in California. At the custody hearing during the divorce proceedings regarding K.L., respondent was awarded joint custody. He had "a few visitations" until K.L. "just disappeared" when she was four years old. Respondent said he did not have the money to hire an investigator to "track [her] down."

¶ 10 Respondent testified he has an anxiety disorder. He said he makes "no excuses for it. It just is." He has learned coping strategies in therapy and regularly takes medication. He said if he received custody of K.L., he would enroll her in the local program for autistic children. He said he has done research on how best to live with autism. Kyle has diabetes, so respondent said he has "to be on it," and he feels he could do the same with K.L.'s autism. He said, with Kyle's diabetes, he is "very adamant about making sure that, you know, nothing goes awry."

¶ 11 In the dispositional report filed with the court, the caseworker mentioned that respondent put forth a "limited effort" in contacting caseworkers regarding K.L.'s life. When questioned about the veracity of this statement, respondent said the statement was false. He explained:

> "Actually, I wasn't given any information at all. In fact, here's the strange part. I went through all the stuff with California, and I went through everything that needed to be done and had a really good report that was, you know, I guess apparently ignored or given at a later date because of the lackadaisical mentality of people handling it.
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> Yeah, I love [K.L.] I am here for [K.L.] And I don't feel that—I feel it's ridiculous to think that—my daughter being with strangers rather than a family that loves her and is here for her and would take care of her would be better than being with strangers in foster care based on the record of what [the mother] has already done and the things that—you know, I don't—I don't get the idea that if you do these things and then we give you another chance, we give you another chance. Yet I have never had a chance to be with our daughter. You know, I held

her—I was the first person to hold her. I changed diapers. I was there the whole time. I love my daughter. And anything I can do to make her life easier would be something that I would do. And I—my son loves her. We miss her. I've got my mother, my family.

My thing that I don't understand about this also is that even her—[the mother's] own mother wouldn't take the child rather than having her go into foster care. Now, what does that mean? My mother would eat rocks for us. So I just don't get the concept of that ethic. So I just—I would really, really like to be with my daughter and take care of her. And I don't have a problem having [the mother] be involved, at least have a visitation or something like that, if that's the case. But if this is all about vindictiveness or something where it has to do with just keeping the child from me just because, I find that to be completely ludicrous, because it's not in her best interest at all.

I mean, we're here about a child. We're not here about, you know, everybody getting paid and everybody holding on to the child. We're here about the child's life. And every day that she's in foster care is one more day that she has no one that really loves her, that knows her to be there for her. And I have a great rapport with her. We've had the—the things. She remembers me. She says hi to my mom, my grandma. I've got five brothers and sisters. I've got a family unit that at least—you know, we're all—we've got each other's back. So I don't see where any of this should be continued so that [K.L.] has to still be in foster care. She has a family that wants her."

¶ 12 On cross-examination, respondent admitted the last time he saw K.L. in person was when she was three years old. He said he did not have "the funds" to get to Illinois, and he "certainly wasn't going to be leaving with [her] at any time" because either DCFS or the Baby Fold would not allow it. He was offered a plane ticket to come to Illinois, but he had no place to stay. He said he was able to video chat with K.L. during the previous case, but the Baby Fold did not currently have the technology available.

¶ 13 Respondent said he would appreciate an opportunity to be with K.L. and to re-establish a relationship. He said his home is suitable for her, as she would have her own room. He thought he could take her to Disneyland to "get her acclimated to California."

¶ 14 After considering the testimony and recommendations of counsel, the trial court found respondent fit but unable to care for K.L. because of the lack of a relationship. The court "share[d] the concerns that have been expressed about the lack of contact during the last case and since the last case closed." The court found it "disturbing." The court believed respondent was "probably the best return option if he establishes a relationship with [K.L.], but he's going to have to come out and do that." The court stated:

> "Now, whether she was here rightfully or wrongfully by any actions by her mother isn't really the issue. The fact is that she hasn't had a relationship with her father, and he needs to try to establish that if he does want to have her returned to him. This isn't about making up for whatever actual or perceived wrong was done six or nine years ago. This is about what's in [K.L.]'s best interest today."

The court entered a dispositional order, making the minor a ward of the court and placing guardianship with DCFS, finding respondent fit but unable to care for K.L, and setting the goal at "return home in 12 months."

¶ 15 Respondent filed a motion to reconsider, claiming an inconsistency between the trial court's finding at the hearing (finding respondent fit and unable) and the indication in the written order (finding respondent unfit and unable). At the hearing, respondent appeared by telephone and through counsel. He testified the Baby Fold offered to pay half of his airfare and hotel, however he said he does not have the money to pay for the other half of the expenses. The State agreed the written order contained a typographical error. The State agreed the court held respondent fit and unable. The court found no new evidence was presented to justify a reconsideration of the dispositional order. The court ordered an amended dispositional order to correct the typographical error. The court reiterated: "[Respondent]'s fit but unable because primarily of the lack of any relationship."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Respondent appeals the trial court's dispositional order as against the manifest weight of the evidence. He claims: (1) the "cookie cutter" services requested had already been completed in the previous case; (2) the caseworkers had not generated a service plan in this case; (3) he had to locate his own service providers for recommended tasks; and (4) the agency failed to fund transportation in order to establish permanency for K.L. Because we find the court's dispositional order was not against the manifest weight of the evidence, we affirm.

¶ 19 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2014)) "provides the procedures that must be followed for determining whether a minor should be

removed from his or her parents' custody and made a ward of the court" and sets forth a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18. The first step requires the trial court to conduct an adjudicatory hearing to determine whether a minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19 (quoting 705 ILCS 405/2-18(1) (West 2010)). If the court finds a minor abused, neglected, or dependent, it moves to the second step and conducts a dispositional hearing to determine "whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012 IL 113875, ¶ 21 (citing 705 ILCS 405/2-21(2) (West 2010)).

¶ 20 On review, the trial court's dispositional decision "will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008). "A finding of the trial court is against the manifest weight of the evidence if a review of the record clearly demonstrates that the result opposite to the one reached by the trial court was the proper result." *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991). "This standard of review recognizes that the trial court is in a much better position than is this court to observe the witnesses, assess credibility, and weigh the evidence," and "[f]or this reason, a reviewing court will not overturn the trial court's findings merely because the reviewing court might have reached a different decision." *T.B.*, 215 Ill. App. 3d at 1062.

¶ 21 After reviewing the record, we cannot say it is clear the trial court should have reached the opposite result with respect to K.L.'s placement. In reaching its decision, the court relied on the lack of an established relationship between K.L. and respondent. On appeal, respondent attempts to minimize this issue, pointing to (1) the alleged errors regarding the handling of the case, and (2) the home study demonstrating his California home is suitable and

appropriate for K.L.'s placement. Those two assertions may be true; however, the pivotal point at this stage of the proceedings is the lack of a relationship between father and daughter. The issues respondent raises in this appeal tend to relate to whether the State sufficiently proved fitness. Because the court found respondent fit, these arguments are moot. The court found respondent fit and clearly stated respondent's home may be the most appropriate return placement. However, before such placement takes place, respondent must demonstrate his ability to parent K.L. He must make himself present and available for her in Illinois. The State does not disagree with the points primarily argued by respondent regarding the suitability of his parenting skills, his home, or his desire. The court found it was not feasible to send K.L. to California to live with respondent when there has been no personal relationship established for years.

¶ 22 After reviewing the record, we cannot say it clearly demonstrates the trial court should have reached the opposite result with respect to its determination of respondent's inability to care for K.L. at this juncture. The court made it clear respondent remained a viable return placement for K.L. if he demonstrated his ability to care for her, eradicating any risk of harm should she be placed in his care. In other words, respondent needs to prove his ability to parent K.L. and to safely address her special needs first in the presence of or under the supervision of the caseworkers. We find no authority requiring DCFS or the Baby Fold to pay the expenses for this undertaking. Nevertheless, under the circumstances presented, we find the court's dispositional finding was not against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.