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2017 IL App (3d) 170033-U

Order filed October 10, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

In re N.S.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a minor,	)	Tazewell County, Illinois.
	)	
(THE PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	Appeal No. 3-17-0033
Petitioner-Appellee,	)	Circuit No. 16-JA-84
	)	
v.	)	
	)	
ERIN S.,	)	Honorable
	)	Kirk D. Schoenbein,
Respondent-Appellant).	)	Judge, Presiding.

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PRSIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Schmidt and Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* A trial court's conclusion that a mother was dispositionally unable to care for the minor was reversed on appeal where the trial court's findings that the mother showed poor judgment in entering into a new relationship too quickly after leaving an abusive relationship was against the manifest weight of the evidence and an abuse of the trial court's discretion.

¶ 2 The respondent mother, Erin S., appealed from a trial court's dispositional order finding her unable to care for the minor, N.S., and ordering the minor remain a ward of the court.

¶ 3 FACTS

¶ 4 On July 26, 2016, the State filed a petition alleging that N.S. was neglected due to an environment injurious to his welfare. The parties stipulated to an adjudication of neglect and the minor being made a ward of the court, pending a dispositional adjudication. The Department of Children and Family Services (DCFS) was appointed guardian, and the minor was placed with his maternal great-grandparents. The matter proceeded to a dispositional hearing on January 6, 2017.

¶ 5 Ms. Stevie Joachim, the social worker assigned to respondent's case, testified that the respondent had successfully completed all planned services, including domestic violence victim classes, a parenting class, a psychological profile report, and individual abuse victim counseling. Joachim also testified that the respondent had recently relocated to Canton, Illinois, where she had secured employment and had reliable transportation to and from work. Joachim also testified that the respondent was in the process of looking for a house in Canton, and expected to move into a home shortly after the hearing. The court questioned Joachim regarding the respondent's relationship with a male individual who lived in Canton. Joachim testified that the respondent had informed her that she had recently started dating a man whom she identified by name to Joachim. Joachim also testified that she had no recollection of anything noteworthy about the man's background or how the respondent had come to meet him. She further testified that she had not made a written note of the man's name and had forgotten his name by the time she completed her written report. Joachim also testified that the respondent told her that she was not living with the man.

¶ 6 The respondent was called to testify by the State and was questioned about her relationship with a man, Justin Hammack, whom she had recently started dating. The respondent testified that she had met Hammack in Canton and had been dating him for approximately one month prior to the hearing. She had met him through a mutual acquaintance in Peoria. She testified that Hammack lived in Canton with a friend, and that she and Hammack had been dating once or twice per week for approximately one month prior to the hearing. The court questioned the respondent about her relationship with Hammack. In response to the court's inquiry regarding Hammack's driving record, the respondent testified that she believed that Hammack had a DUI and that he did not have a current valid driver's license. The court questioned why the respondent was entering into a new relationship while the matter was pending, and whether it was "wise" for the respondent to start a relationship so soon after the events which caused the State to intervene in her parental life. The respondent told the court that she had new abuse prevention skills acquired as a result of her counseling and training and she would use those skills to prevent her or N.S. from being abused. She told the court that "if it came to down to him or my son, it's going to be my son." The court acknowledged that there was no evidence that the respondent's relationship with Hammack was inappropriate, but observed that it "would be better" for the respondent if she were not pursuing any relationship while the matter was pending before the court.

¶ 7 The Guardian *ad litem* (GAL) reported that the minor was "doing well and really misses his mon." When the court expressed concern regarding Hammack, the GAL made a motion that the matter be continued until such time as Hammack's background could be investigated to the satisfaction of the court. The court denied the motion, observing that there was sufficient evidence on the record from which to make a dispositional determination.

¶ 8 At the close of evidence, counsel for the Department of Children and Family Services (DCFS), addressed the court: "We have two parents who from what I [have] heard \*\*\* are both fit and able parents. When you have fit and able parents, there [is] no reason to make children wards of the court." Regarding the respondent's current ability to care for the minor, DCFS counsel argued "[respondent] is in a shelter which the report says is safe and reasonable place for a child to be returned to \*\*\* [the minor] would only be there for less than a week because [respondent] has a lease [on] a house starting next week." Counsel added, "I have never seen a case where a parent has done services like this \*\*\* [respondent] has done every service that is in her [plan] and she is continuing counseling beyond what was required." Regarding respondent's relationship with Hammack, DCFS counsel opined that respondent's actions were appropriate – "she [is] dating him slow[ly], like she [is] supposed to; like she learned in her counseling." Counsel then made the observation that respondent's actions were the best she had ever seen in a juvenile case and that DCFS expressed no reservations regarding the respondent's ability to care for N.S.

¶ 9 The court ruled that respondent was fit but unable to care for the minor, citing the lack of background information regarding Hammack and a concern that respondent's relationship with Hammack was an inappropriate "co-dependent" relationship. Accordingly, the court made the minor a ward of the court, with DCFS as continuing guardian. This appeal followed.

¶ 10 ANALYSIS

¶ 11 On appeal, the respondent maintains that the trial court erred in placing the minor under DCFS wardship after finding her unable to care for him. Under the Juvenile Court Act of 1987, once a trial court adjudicates a minor to be neglected, there must be a dispositional hearing. 705 ILCS 405/2-21(2) (West 2012). Section 2-27 of the Act provides that the court may place the

minor outside of his or her parental home if the court determines that the parent is unfit or unable to care for the minor. 705 ILCS 405/2-27 (West 2012). The State must prove parental unfitness or inability to care for the minor for dispositional purposes by a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. We will reverse a trial court's dispositional determination only if the findings of fact are against the manifest weight of the evidence, or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order. *Id.* at ¶ 23.

¶ 12 After reviewing the record, we find that the trial court's finding that the respondent was dispositionally unable to care N.S., based on her relationship with Hammack, was both against the weight of the evidence and a clear abuse of the court's discretion. The trial court questioned the respondent's judgment in deciding to enter into any kind of a relationship due to her apparent "co-dependent" personality. The court also assumed, without any evidence in support, that Hammack would likely be an abuser. The record simply does not support the court's findings.

¶ 13 The record established that the respondent had been in an abusive relationship with N.S.'s father and that relationship had been the cause of the minor being placed in shelter care. However, the record established, without contradiction, that the respondent had successfully completed both group and individual counseling and training equipping her to recognize and avoid abusive relationships. She demonstrated, again without contradiction, that she was aware of her responsibility to protect herself and N.S. from potential abuse; that she took the responsibility seriously; and that she would stop a relationship with Hammack, or anyone else, if it endangered the child's welfare or safety. The record further established that DCFS was more than satisfied that the respondent was able to care for N.S. The statements made by counsel for DCFS that respondent had demonstrated an unprecedented ability to rectify the problems that

gave rise to the instant neglect case were unchallenged. While the ultimate determination regarding the best interest of the child remains with the court, the fact that DCFS expressed no concern with the child being returned to the respondent is unrebutted and the court's decision to ignore the uncontroverted record was a clear abuse of its discretion.

¶ 14 Moreover, the court's concern that Hammack posed a potential threat of abuse toward the respondent or the minor was unsupported in the record. The respondent's statement to the court that she would not allow herself or N.S. to be abused in the future, and DCFS's position that the respondent now had the skills to avoid being a victim of abuse were unrebutted. Since the trial court's findings of fact were against the manifest weight of the evidence, and its dispositional findings based upon those facts was an abuse of discretion, the court's order is reversed and vacated and the matter is remanded for further proceedings.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Tazewell County is reversed and the cause is remanded for further proceedings consistent with this order.

¶ 17 Reversed; cause remanded.