

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 170549-U

Order filed December 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> K.L.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Tazewell County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-17-0549
)	Circuit No. 17-JA-19
v.)	
)	
Rachel C.,)	Honorable
)	Kirk D. Schoenbein,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court’s decision to terminate wardship was not against the manifest weight of the evidence.
- ¶ 2 On April 6, 2017, the trial court adjudicated K.L. (the minor) neglected, found Rachel C. (mother) was an unfit parent, found father (Greg F.) was a fit parent, and made the minor a ward of the court. On July 20, 2017, at a permanency review hearing, based on Greg F.’s uncontested

parental fitness, the court entered an order terminating wardship over the minor and closed the juvenile proceeding. Mother appeals the trial court's decision to terminate wardship and close the juvenile court proceeding.

¶ 3

FACTS

¶ 4

On February 7, 2017, the State filed a petition requesting shelter care and alleging that mother neglected the minor, born January 11, 2012, due to an injurious environment and medical neglect.¹ 705 ILCS 405/2-3(1)(b) (West 2016); 705 ILCS 405/2-3(1)(a) (West 2016). Count I of the petition alleged that in 2015 mother was involved in a relationship with Chase Vandyke, a registered sex offender. Due to this relationship, the minor's father, Greg F., requested the court to enter an order of protection against Vandyke which named the minor as a protected person in Tazewell County case No. 15-OP-980. On August 11, 2016, the minor was present during a domestic violence incident between mother and Vandyke. Thereafter, mother requested and received a temporary order of protection against Vandyke in Tazewell County case No. 16-OP-611.

¶ 5

The 2017 petition also contained allegations that beginning in December 2016, mother allowed Jordan Franks and his friend, Joshua Talles, to reside in her household. The 2017 petition alleged that on January 30, 2017, mother and Franks were involved in a physical altercation. Additionally, on February 2, 2017, mother, Franks, and Talles became involved in a physical confrontation in mother's home sometime between 3 a.m. and 5 a.m. Mother eventually left the home with the minor and went to her mother's residence. The petition alleged the minor went to school on February 2, 2017, with a scratch on his face and reported to a teacher the

¹The State's petition indicates that Greg F. is K.L.'s legal father.

minor was scratched when he attempted to help his mother during a physical altercation with Franks.

¶ 6 The petition alleged that the next day, on February 3, 2017, Talles was arrested for unlawful participation in methamphetamines manufacturing. In addition, on February 6, 2017, Franks was arrested for unlawful participation in methamphetamines manufacturing. The petition also alleged mother admitted to using marijuana to an Illinois Department of Children & Family Services (DCFS) worker in January 2017 and was suspected of using drugs in October 2016.

¶ 7 With regard to count II, the medical neglect allegation, the petition alleged that:

“the minor is not receiving medical as recognized under State law that is necessary for the minors well being in that the minor had tubes placed in his ears on or about August 18, 2015. The minor was scheduled for post operative visits with the Ear Nose and Throat Specialist on August 26, 2015 and September 15, 2015 and the mother failed to attend both visits. The doctor’s office attempted to contact the mother and she would hang up or refuse the calls. The minor’s pediatrician stated that this failure by the mother constitutes medical neglect.”

¶ 8 On February 7, 2017, the trial court entered a temporary custody order which appointed the minor a guardian *ad litem* and awarded temporary custody of the minor to the minor’s legal father, Greg F. The court also entered an order of protection against mother prohibiting mother from having any contact with the minor except as allowed by the terms of the supervised visitation order granted by the court.

¶ 9 On February 16, 2017, mother filed an answer to the State’s petition. Mother’s answer stipulated to the majority of the allegations of count I of the petition, but denied sufficient knowledge of the prior criminal histories and arrests of Vandyke, Franks, and Talles. Mother

also denied that Talles resided with her. With respect to count II, medical neglect, mother denied the allegations.

¶ 10 Following a hearing on April 6, 2017, the trial court adjudicated the minor neglected. Based on the evidence, the court found that while in mother's care, the minor suffered from a lack of support, education, and remedial care, and was subject to an injurious environment. 705 ILCS 405/2-3(1)(a) (West 2016); 705 ILCS 405/2-3(1)(b) (West 2016). The trial court made the minor a ward of the court and placed the minor in Greg F.'s custody.

¶ 11 Next, the court immediately proceeded to a dispositional hearing. Following the hearing, the court found Greg F. fit and mother unfit for "Failure to protect minor from domestic violence, dangerous choices of men to be in a relationship with and to be around the minor; unresolved drug abuse, medical neglect and deception to cover up abuse to the minor." The trial court ordered mother to: perform two random drug drops per month, obtain and maintain stable housing, and visit K.L., as scheduled, *inter alia*. The trial court also ordered mother to participate and successfully complete counseling, substance abuse treatment as recommended, a parenting course, and a domestic violence course.

¶ 12 On July 20, 2017, the trial court conducted the first permanency review hearing. To begin the hearing, the trial court noted that the court had received a permanency report dated June 29, 2017, and authored by caseworker Amanda Nelson. The permanency report indicated that of the 10 drug tests requested by DCFS, mother failed one drug test, missed eight drug tests, and could not provide identification so as to successfully complete another drug test. Mother has engaged in weekly visitation with the minor but has not engaged in any other recommended services.²

¶ 13 According to the permanency report, Nelson visited mother's house on several occasions, and mother's home met minimum standards. During a home visit conducted by Nelson on

²The record indicates that mother began some services but stopped attending.

April 20, 2017, Nelson found a used syringe under the edge of mother's couch. According to the permanency report submitted to the court, Nelson also received multiple reports that Franks had moved back into mother's residence, prompting Nelson to make an unannounced visit to mother's home. Upon arrival, Nelson discovered a man fitting Franks' description in mother's bed.

¶ 14 The permanency report further indicated that Greg F. and his wife resided in Pekin, IL. Nelson visited Greg F.'s home several times and described the home as clean with no safety concerns. Greg F. is currently employed by Thillens Armor Truck Company in Slinger, WI. Greg F. has been promoted twice since receiving the job.

¶ 15 According to the permanency report, Greg F. has kept in contact with Nelson, and has been cooperative with visitation between K.L. and other family members. The permanency report concluded that Greg F. and his wife are able to offer the minor a safe, stable environment, and are able to provide for all the minor's needs. Greg F.'s wife, the minor's step-mother, provides for the minor's care while Greg F. is at work. Each time Nelson visited Greg F.'s home, she observed the minor appeared to be happy and had been playing with his siblings³ or friends. Nelson stated that the minor appeared well adjusted to life in Greg F.'s household.

¶ 16 Nelson also testified at the permanency review hearing. During Nelson's testimony, she stated that mother told Nelson that mother was not participating in drug tests due to a combination of lack of transportation and daily struggles. Mother told Nelson that the syringe Nelson found was not mother's. Mother also refused to tell Nelson the identity of the man Nelson discovered in mother's bed. Nelson stated that a bed was open for mother for inpatient treatment at Gateway in Springfield at 3:30 p.m. the day of the court hearing on July 20, 2017. Nelson said mother intended to participate in the treatment.

³The record indicates that Greg F. has two other children and was expecting the birth of a third child.

¶ 17 Mother testified before the court and explained that the syringe Nelson found belonged to mother's friend, Brian Arnold, and that the man Nelson found in mother's bed was named Logan. Mother stated that she missed her drug tests because she was an addict. Mother intended to head to Springfield that day to receive inpatient treatment in order to combat her drug addiction.

¶ 18 Greg F. testified that he lives with his in-laws in Mayville, Wisconsin during the week to be closer to work. Greg F. resides in Pekin, Illinois on the weekends. Greg F. stated if the case were to be closed, the family intended to move to West Bend, Wisconsin so that Greg F. could be closer to work.

¶ 19 Following the testimony, the court requested argument between the parties to address the possibility of terminating the minor's wardship and closing the case that day. During argument, the State and Greg F.'s attorney argued that the case should be closed with guardianship and custody granted to Greg F. Mother's attorney argued against closing the case.

¶ 20 K.L.'s guardian *ad litem* originally took no position regarding closure of the juvenile proceedings. K.L.'s guardian *ad litem* noted that the order should be modified to allow K.L. to leave the State of Illinois if the juvenile proceedings were to continue. The record reveals that a prior court order entered in the juvenile case prohibited Greg F. from removing the minor from the State of Illinois. When mother's counsel objected to lifting this condition, the guardian *ad litem* agreed the wardship should be terminated.

¶ 21 Taking the best interest factors into consideration, the trial court found that Greg F. was fit, mother remained unfit, and that it was in the best interest of the minor to terminate the court's wardship, appoint Greg F. as sole custodian and guardian of the minor, and close the case. On

July 20, 2017, the trial court entered a permanency order reflecting the ruling. Mother filed a timely notice of appeal on August 21, 2017.

¶ 22

ANALYSIS

¶ 23

On appeal, mother argues the trial court's decision to terminate the minor's wardship and close the juvenile proceeding after the first permanency review hearing was premature and contrary to the best interest of the minor. The State asserts that the trial judge's decision regarding the minor's best interest was not against the manifest weight of the evidence and warranted the termination of wardship since the minor was well assimilated into a stable environment with Greg F.

¶ 24

The proceedings in this case are governed under the Juvenile Court Act of 1987 (the Act). 705 ILCS 405/1-1 *et seq.* (West 2016). "Whenever the court determines, and makes written factual findings, that health, safety, and the best interests of the minor and the public no longer require the wardship of the court, the court shall order the wardship terminated and all proceedings under this Act respecting that minor finally closed and discharged." 705 ILCS 405/2-31(2) (West 2016).

¶ 25

When making a best interest determination the trial court's considerations should include: (1) the physical safety and welfare of the child, including food, shelter, clothing, and health; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the

child, *inter alia*. 705 ILCS 405/1-3(4.05) (West 2016); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 26 When child custody proceedings are brought under the Act, the court’s “primary concern is the best interests of the child, and, to that end, the court is vested with wide discretion.” *In re M.M.*, 337 Ill. App. 3d 764, 779 (2002). Thus, the trial court’s findings will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Id.* A trial court’s determination is against the manifest weight of the evidence only when “the opposite conclusion is clearly evident” or where the determination is “unreasonable, arbitrary, or not based on the evidence presented.” *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 27 In this case, the trial court made the minor a ward of the court on April 6, 2017, and placed the minor in Greg F.’s custody, subject to a condition prohibiting the removal of the minor from the State of Illinois. While the State justifiably initiated neglect proceedings based on the risk of harm to the minor arising from mother’s unhealthy behaviors, it appears wardship may not have been necessary since the minor had another fit parent willing to provide for the care and custody of the minor. However, for purposes of this appeal, neither party contests the trial court’s decision to make the minor a ward of the court and then place the minor in Greg F.’s care and custody on April 6, 2017.

¶ 28 The court scheduled the matter for a permanency review hearing on July 20, 2017. On that date, after careful consideration, the trial court terminated the minor’s wardship and closed the juvenile court proceedings just three months after the minor was adjudicated neglected and mother was found unfit.

¶ 29 To begin, the State concedes, and we agree that several factors weigh in favor of continuing the court’s wardship of this minor. Certainly, K.L.’s identity, background, and family

