2017 IL App (4th) 170459-U

NOS. 4-17-0459, 4-17-0460 cons.

FILED
October 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Kac. M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0459) Kayla Tournear, Respondent-Appellant).	)	Appeal from Circuit Court of Adams County No. 16JA45
In re Kar. M., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0460) Kayla Tournear, Respondent-Appellant).	)	No. 16JA46
	)	Honorable John C. Wooleyhan, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court vacated the trial court's default judgment, adjudicatory order, and dispositional order, concluding the court's failure to admonish respondent of her rights under section 1-5 of the Juvenile Court Act of 1987 (705 ILCS 405/1-5 (West 2016)) constituted plain error.

¶ 2 In October 2016, the State filed a petition for adjudication of wardship, alleging Kac. M. (born December 16, 2011) and Kar. M. (born October 16, 2012) were subjected to an injurious environment while in the care of their mother, respondent Kayla Tournear. Respondent failed to appear in court on January 3, 2017, and the trial court entered default judgment against

her. On January 30, 2017, when respondent appeared for the first time in this case, the court failed to admonish her regarding her rights under section 1-5 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-5 (West 2016)). Following a March 2017 adjudicatory hearing, the court found the children abused and/or neglected. After an April 2017 dispositional hearing, the court found respondent unfit, made the children wards of the court, and granted guardianship of the children to the Department of Children and Family Services (DCFS).

¶ 3 Respondent appeals, asserting (1) the trial court committed plain error when it failed to admonish her of her rights, specifically her right to counsel; and (2) the court's adjudicatory finding was against the manifest weight of the evidence. For the following reasons, we vacate the trial court's default judgment, adjudicatory order, and dispositional order, and remand the case for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In October 2016, the State filed a petition for adjudication of wardship, asserting Kac. M. and Kar. M. were neglected or abused in that they were subjected to an injurious environment. The State enumerated the following facts to support its petition. On September 15, 2016, when Beth Wienhoff, a child-protection investigator for DCFS, attempted to check on the family regarding a prior indicated finding, she discovered respondent had been asleep and could not immediately locate Kar. M. when Wienhoff asked his whereabouts. Respondent was asked to submit to drug screening the next day, but she failed to appear. On September 20, 2016, Wienhoff returned to again check on the family. Wienhoff noted Kac. M. was not at preschool. Although respondent would not allow Wienhoff inside, Wienhoff observed garbage, clothing, and other items scattered on the floor.

¶ 6 A. Initial Court Proceedings

¶ 7 An adjudicatory hearing was scheduled for November 30, 2016; however, respondent did not receive notice of the hearing. The case was thereafter scheduled for hearing on January 3, 2017. On this occasion, respondent received the necessary summons. The summons (1) advised respondent of her right to attorney, (2) told her to notify the Clerk of the Court if she wanted appointed counsel, and (3) admonished respondent that her failure to appear would result in a default judgment.

¶ 8 On January 3, 2017, respondent failed to appear in court. When the court took up the matter, the State indicated it lacked the necessary information to go forward and asked for a status date, which the court granted. Although not mentioned in open court, the appearance order entered and filed January 3, 2017, reflects the entry of a default judgment against respondent. A notation at the bottom of the appearance order indicates respondent arrived late, after the proceedings had concluded. The case was rescheduled for hearing on January 23, 2017, and respondent received notice of the hearing. On January 23, respondent again failed to appear. The State asked for a continuance until January 30, which the court granted.

¶ 9 On January 30, 2017, respondent appeared in court for the first time. The trial court told respondent default judgment had been entered against her due to her failure to appear on January 3. Although it was respondent's first appearance, the court did not advise respondent of her rights with respect to the proceedings. The case was thereafter scheduled for an adjudicatory hearing.

¶ 10 B. Adjudicatory Hearing

¶ 11 On March 2, 2017, the trial court held the adjudicatory hearing. Respondent was present, but she did not have an attorney present on her behalf, nor did the court admonish her regarding her rights—including her right to counsel—under the Juvenile Court Act. The

following evidence was heard by the court.

¶ 12 Wienhoff testified she received a hotline report in July 2016 that respondent was not properly supervising the children. The report indicated police had been called to her residence the night before in response to a fight between respondent and her boyfriend. Police suspected respondent had been using drugs. The house also lacked proper food for the children. DCFS made an indicated finding against respondent, but respondent ignored Wienhoff's attempts to make contact for several weeks. Wienhoff made contact with respondent's mother, who told Wienhoff that she conveyed Wienhoff's repeated messages to respondent.

¶ 13 On September 15, 2016, Wienhoff finally made contact with respondent at the Eagle's Nest Hotel, where respondent and her family was staying. Respondent was groggy when she answered the door. Respondent explained she was tired because police had been in her room asking questions about her boyfriend until 4 a.m. Kac. M., who would normally be in his early childhood education program, was with respondent. Respondent was not sure of Kar. M.'s whereabouts, but thought he might be with his 14-year-old aunt. A quick inquiry revealed Kar. M. was not with his aunt, nor was he with his father. After searching the hotel for about 15 minutes, a hotel employee who lived on the premises came down the hall with Kar. M. According to the employee, Kar. M. regularly visited her room when he was hungry. Wienhoff stated that respondent characterized the Eagle's Nest as a "drug hotel."

¶ 14 After Kar. M. was determined to be safe, Wienhoff spoke with respondent about her avoidance of DCFS. Respondent replied that she had been too busy taking care of the children to contact Wienhoff. Wienhoff asked if respondent would submit to a drug screen, and respondent agreed that she would. She made arrangements to complete the screening the next day. However, the next day, respondent called Wienhoff and left a message asking for other

drug-screening providers due to difficulty obtaining transportation to the facility Wienhoff initially suggested. Wienhoff attempted to return respondent's call, but respondent did not answer the phone.

¶ 15 When respondent failed to appear for her drug screening, Wienhoff returned to the hotel. When she arrived, she heard Kac. M. begging respondent to take him to preschool. By that time, the school day had already begun. When asked why Kac. M. was not in school, respondent stated he was sick with a high fever. Wienhoff noticed no signs of illness. Wienhoff informed respondent that DCFS made an indicated finding after the July 2016 incident and that a petition would be filed in the trial court.

¶ 16 The trial court noted respondent had already been defaulted but asked if she had anything she wanted to say. Respondent stated she did not understand the proceedings and asked for an attorney. The court said it would address her request after the adjudicatory hearing.

¶ 17 Following the presentation of evidence, the trial court found the children abused and/or neglected. After entering its order, the court appointed an attorney to represent respondent for purposes of the dispositional hearing.

¶ 18 C. Dispositional Hearing

¶ 19 On April 27, 2017, the trial court held a dispositional hearing. The parties presented no evidence and, instead, relied on the dispositional report filed by Quincy Catholic Charities. The dispositional report indicated respondent was uncooperative with her caseworker and services. After initiating the case in September 2016, the caseworker attempted to make contact with respondent at the hotel where she was staying, but the caseworker learned respondent was no longer living there. The caseworker eventually discovered the children living with their maternal great-grandmother, Judy Powell, but respondent's location was unknown at

that time. Powell reported respondent left the children with her, but respondent had not returned to pick them up and failed to provide appropriate clothing. When the caseworker finally spoke with respondent on October 11, 2016, respondent agreed to sign over temporary guardianship to Powell, but she later changed her mind and signed over temporary guardianship to Melissa McGlauchlin, the children's paternal step-grandmother.

¶ 20 Since November 1, 2016, the children had been in McGlauchlin's custody, and they were attending an early childhood education program. Respondent was not consistently attending scheduled visits with the children until sometime in April 2017.

¶ 21 Respondent admitted to her caseworker on several occasions that she continued to use methamphetamines and marijuana. When the caseworker went to respondent's home three times—twice in February 2017 and once in March 2017—to administer random drug screens, respondent did not answer the door. Respondent then failed to appear for a scheduled drug screening in March 2017.

¶ 22 Due to respondent's lack of cooperation, Quincy Catholic Charities recommended the trial court grant guardianship of the children to DCFS with the power to place the children with McGlaughlin. The report further recommended the court order respondent to cooperate with DCFS and associated agencies and comply with the service recommendations, including substance-abuse treatment and mental-health counseling.

¶ 23 The trial court thereafter asked respondent about her employment and housing. Respondent told the court she was working at Daylight Donuts, where she received between $400 and $500 every two weeks. She also received $198 in food stamps.

¶ 24 After considering the evidence, the trial court entered a dispositional order (1) finding respondent unfit, (2) making the children wards of the court, and (3) granting guardianship to DCFS.

¶ 25 On May 30, 2017, respondent filed a timely *pro se* "Motion of Appeal." On June 2, 2017, respondent's attorney filed an amended notice of appeal in the trial court, seeking to clarify the *pro se* "Motion of Appeal." We now turn to the issues on appeal.

¶ 26 II. ANALYSIS

¶ 27 On appeal, respondent asserts (1) the trial court committed plain error when it failed to admonish her of her rights, specifically her right to an attorney; and (2) the court's adjudicatory finding was against the manifest weight of the evidence. Before we reach the merits, however, the State asserts we lack jurisdiction over this appeal.

¶ 28 A. Jurisdiction

¶ 29 The State makes two arguments with respect to our jurisdiction. First, the State argues respondent's *pro se* "Motion of Appeal" was actually a postjudgment motion, as it sought review of a DCFS agency opinion. Because this "postjudgment motion" had yet to be ruled upon by the trial court, the State argues the appeal was premature and we therefore lack jurisdiction. We disagree with this characterization of the motion.

¶ 30 "The purpose of a notice of appeal is to inform the prevailing party that the unsuccessful party has requested review of the judgment complained of and is seeking relief from it." *In re F.S.*, 347 Ill. App. 3d 55, 68, 806 N.E.2d 1087, 1097 (2004). The notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. Jan. 1, 2005). A notice of appeal should be liberally construed and accepted when, "as a whole, it advises the successful party of the

nature of the appeal by fairly and adequately setting out the judgment complained of and the relief sought." *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 244, 854 N.E.2d 774, 779 (2006). "Where the deficiency in a notice of appeal is one of form rather than substance and the appellee is not prejudiced, the absence of strict compliance with form is not fatal." *Id.*

¶ 31 We begin by noting the motion is entitled "Motion of Appeal" and lists the trial court numbers, which provides a clear indication that respondent intended to appeal her trial court cases. The *pro se* motion is approximately eight pages long, and while it does reference a DCFS agency opinion, the motion also specifically seeks an appeal of the trial court's ruling. In the "Motion of Appeal," respondent argues (1) she possessed evidence to contradict the Wienhoff's testimony regarding her contacts with DCFS, (2) Wienhoff mischaracterized the situation where Kar. M. was temporarily out of respondent's custody, and (3) Wienhoff provided inaccurate information to the court. The "Motion of Appeal," then specifically states, "[T]he court's missed there [*sic*] ruling on one allegation. The circuit court's findings of abuse and neglect are based on the same facts that form the basis for [DCFS's] indicated findings." Thus, the "Motion of Appeal" challenged the sufficiency of the evidence as it related to her trial court cases.

¶ 32 Respondent's "Motion of Appeal" further challenged her inability to participate in the adjudicatory hearing, stating, she "*was not* assigned an attorney until the end of the hearing on [March 2, 2017]. Due to this [I] was *never* allowed to speak up on [my] own behalf or have any defenses." (Emphases in original.) As a result, respondent asked for reversal of the adjudicatory order.

¶ 33 Respondent's "Motion of Appeal" imperfectly alleged how DCFS's actions resulted in an improper result before the trial court. But, taken as a whole, the "Motion of

Appeal" demonstrates respondent's clear intention to appeal the adjudicatory orders entered on March 2, 2017, as well as the denial of her right to an attorney during the adjudicatory hearing. We therefore conclude the "Motion of Appeal" is a notice of appeal that (1) specified the judgment being challenged, (2) outlined the relief sought, and (3) informed the State that respondent has requested review of the judgment complained of and is seeking relief from it. See *F.S.*, 347 Ill. App. 3d at 68, 806 N.E.2d at 1097. To the extent the "Motion of Appeal" referenced the DCFS agency opinion, such an issue was not properly before the trial court and would not constitute a postjudgment motion that would delay the time for filing an appeal.

¶ 34 The State's second argument is that we lack jurisdiction because the respondent's attorney filed the amended notice of appeal in the trial court, rather than the appellate court. Under Illinois Supreme Court Rule 303(b)(5) (eff. Jan. 1, 2005), when a party seeks to amend a notice of appeal after the initial 30-day period has expired, the amended notice of appeal must be filed in the appellate court. Here, respondent filed a timely notice of appeal on May 30, 2017, as May 27, 2017, was a Saturday, and May 29, 2017, was a holiday. See 5 ILCS 70/1.11 (West 2016) (when the final day for filing falls on a weekend or holiday, the document may be filed on the next business day). Respondent's attorney filed an amended notice of appeal on June 2, 2017, which was after the original 30-day period to file the notice. Thus, under Rule 303(b)(5), the proper procedure would be to file an amended notice of appeal in this court rather than in the trial court. However, even if the amended notice of appeal was improperly filed in the trial court, we have already concluded the *pro se* "Motion of Appeal" was sufficient to confer jurisdiction on this court. See *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176, 950 N.E.2d 1136, 1143 (2011) (The filing of a notice of appeal is the only jurisdictional step necessary to

initiate appellate review). We therefore conclude we have jurisdiction over this appeal. We now turn to the merits of this case.

¶ 35 B. Failure to Admonish

¶ 36 Respondent asserts the trial court committed plain error by failing to advise her of her rights under the Juvenile Court Act. The failure to preserve an issue before the trial court ordinarily results in forfeiture of that issue on appeal. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). However, the reviewing court may consider otherwise forfeited issues where there are "[p]lain errors or defects affecting substantial rights." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 37 The plain-error doctrine can be applied to clear or obvious errors in juvenile abuse and neglect cases "if the evidence is closely balanced or the error affects substantial rights." *In re Andrea D.*, 342 Ill. App. 3d 233, 242, 794 N.E.2d 1043, 1050-51 (2003). In determining whether to apply the plain-error doctrine, we must first determine whether a clear or obvious error occurred. *People v. Downs*, 2015 IL 117934, ¶ 15, 69 N.E.3d 784.

¶ 38 Section 1-5(1) of the Juvenile Court Act provides, in part:

> "Except as provided in this Section and paragraph (2) of Sections 2-22, 3-23, 4-20, 5-610 or 5-705, the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and also, although proceedings under this Act are not intended to be adversary in character, the right to be represented by counsel." 705 ILCS 405/1-5(1) (West 2016).

¶ 39 Section 1-5(3) adds, "At the first appearance before the court by the minor, his parents, guardian, custodian or responsible relative, the court shall explain the nature of the proceedings and inform the parties of their rights under the first 2 paragraphs of this Section." 705 ILCS 405/1-5(3) (West 2016).

¶ 40 Respondent failed to appear for her court appearance on January 3, 2007, and the trial court entered default judgment against her with respect to the petition. The State then asked to continue the case for adjudicatory hearing, and respondent subsequently appeared on the January 30, 2017, scheduled hearing date. When respondent appeared in court on January 30, the court informed her it had entered default judgment against her. At the State's request, the case was continued for an adjudicatory hearing on March 3, 2017.

¶ 41 The January 30 hearing date was respondent's first appearance. Accordingly, under section 1-5 of the Juvenile Court Act, the trial court was obligated to explain to respondent the nature of the proceedings and her rights with respect to those proceedings, including her right to counsel. Because the court failed to admonish respondent about her rights, respondent argues she had to proceed without counsel until after the adjudicatory hearing. The State argues respondent was informed of her right to counsel in the summons she received. However, the statute is clear. The court has a mandatory duty to inform the parties of their procedural rights, including the nature of the proceedings and the right to counsel. *In re Smith*, 77 Ill. App. 3d 1048, 1053, 397 N.E.2d 189, 193 (1979). The failure to do so constitutes a clear or obvious error.

¶ 42 The question, then, is whether the error constitutes plain error. An error requires reversal under the plain-error doctrine where (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the

seriousness of the error," or (2) the error is so serious that it affected the fairness of the proceedings and undermined the integrity of the judicial process. *People v. Piatkowski,* 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). We examine this case under the second prong.

¶ 43 The State argues that finding plain error excuses respondent's failure to appear at the January 3, 2017, hearing for which she received notice, and it would necessarily render the default judgment ineffective. The State asserts respondent should not be able to claim an advantage on account of her absence from the January 3 proceedings. See *People v. Woolridge*, 292 Ill. App. 3d 788, 791, 686 N.E.2d 386, 388 (1997). In other words, the State classifies this situation as invited error. We disagree.

¶ 44 There is so dispute that the statute gave the trial court the authority to enter a default judgment against respondent for her failure to appear on January 3. Further, no one asserts, as the State implies, that the trial court was required to admonish an empty chair on January 3. However, the trial court *was* required to admonish respondent regarding her rights when she finally appeared on January 30. See 705 ILCS 405/1-5(3) (West 2016). The issue is the ramifications of the court's failure to properly admonish respondent during her January 30 appearance.

¶ 45 Examining the present circumstances highlights just how crucial is it for the trial court to give the parties the proper admonishments at their first appearance. The court entered default judgment against respondent on January 3, and she later appeared at a January 30 hearing date. Respondent appeared within 30 days of the court entering default judgment and, if properly admonished and provided representation, she could have moved to vacate that default judgment. 735 ILCS 5/2-1301(e) (West 2016). Thereafter, the court, in its discretion, could have vacated the default judgment and allowed respondent to fully participate in the adjudicatory

hearing, which was not held until March 2017. 735 ILCS 5/2-1301(e) (West 2016). Given the liberty interests at stake and the lack of prejudice to the State since the hearing had yet to occur, it is likely the court would have granted a motion to set aside the default judgment. See *Rockford Housing Authority v. Donahue*, 337 Ill. App. 3d 571, 574, 786 N.E.2d 227, 229 (2003) ("Factors in deciding whether a default order accomplishes substantial justice include the severity of the penalty to the defendant and the attendant hardship on the plaintiff if it is forced to proceed to trial."). Thus, the court's failure to admonish respondent of her right to counsel deprived her of the timely opportunity to obtain advice from an attorney about vacating the default judgment.

¶ 46 This error was compounded by the trial court's failure to admonish respondent about the nature of the proceedings and her rights under the Juvenile Court Act before proceeding with the March 2017 adjudicatory hearing. Respondent had no attorney present, nor had she been admonished as to her right to counsel. As a result, there was no attorney present to preserve respondent's rights by presenting or cross-examining witnesses, nor was respondent permitted to present or cross-examine witnesses. See *In re D.R.*, 307 Ill. App. 3d 478, 483, 718 N.E.2d 664, 667 (1999) (barring respondent's defense is a harsh sanction when parental rights are at issue). This allowed the State's evidence to be admitted unchecked, including the admission of hearsay evidence.

¶ 47 After receiving the State's evidence, the trial court asked respondent if she wanted to make statements with respect to the case without first admonishing her as to her right to counsel. When respondent stated she was confused and asked for counsel, the court refused to entertain the request until until after the court entered the adjudicatory order. Even after entering the adjudicatory hearing, the court failed to properly admonish respondent that her failure to

cooperate with DCFS and complete the recommended services could result in the loss of her parental rights as required under section 2-21 of the Juvenile Court Act. 705 ILCS 405/2-21 (West 2016).

¶ 48 The trial court's failure to admonish respondent about the nature of the proceedings and her rights under section 1-5 of the Juvenile Court Act at her first appearance resulted in a denial of respondent's right to counsel in a proceeding where her liberty interests were at stake. We therefore conclude the court's error was so serious that it affected the fairness of the proceedings and undermined the integrity of the judicial process. To place respondent in the position she would have been in had the trial court properly admonished her as to her rights under the Juvenile Court Act, we vacate the default judgment, adjudicatory order, and dispositional order, and remand for a new adjudicatory hearing. Because we have vacated the adjudicatory order, we need not address the sufficiency of the evidence.

¶ 49 III. CONCLUSION

¶ 50 Based on the foregoing, we vacate the trial court's default judgment, adjudicatory order, and dispositional order, and remand this case for a new adjudicatory hearing.

¶ 51 Judgment vacated; cause remanded for further proceedings.