2018 IL App (3d) 180445-U

Order filed December 13, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re J.H., Jaz. H., Jazay. H., and Jat. H.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Minors	)	Will County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-18-0445; 3-18-0446;
	)	3-18-0447; 3-18-0448
Petitioner-Appellee,	)	
	)	Circuit Nos. 08-JA-198; 17-JA-21;
v.	)	17-JA-22; 17-JA-23
	)	
Christopher H.,	)	The Honorable
	)	Paula A. Gomora,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's failure to notify father of his right to appeal dispositional order was harmless error where substantial evidence supported trial court's finding that father was unfit.

¶ 2 Respondent is the father of the minors, J.H., Jaz. H., Jazay. H. and Jat. H. The State filed a petition alleging that the minors were neglected due to an injurious environment. The trial court adjudicated the minors neglected and made them wards of the court. At the dispositional hearing,

the trial court found respondent unfit. The trial court did not inform respondent of his right to appeal. The State later filed a motion to terminate respondent's parental rights. Following hearings, the trial court determined that it was in the minors' best interests to terminate respondent's parental rights. Respondent appeals, arguing that the court's dispositional order should be reversed because the trial court failed to notify him of his right to appeal. We affirm.

¶ 3 FACTS

¶ 4 On August 22, 2008, the State filed a petition, pursuant to the Juvenile Court Act of 1987 (Act), alleging that J.H. was neglected because she was born with cocaine and marijuana in her system. On March 21, 2017, the State filed a supplemental petition, alleging that J.H., Jaz. H., Jazay. H. and Jat. H. were neglected due to an injurious environment. The next day, a shelter care hearing was held.

¶ 5 Following the hearing, the court entered an order finding that an immediate and urgent necessity existed for the protection of the minors because J.H., Jaz. H. and Jazay. H. were born exposed to controlled substances, their mother had a history of substance abuse and tested positive for cocaine on March 3, 2017, and both parents had a history of domestic violence.

¶ 6 At the time of the shelter care hearing, respondent was incarcerated at Will County Jail. He was convicted of domestic violence against the minors' mother in 2015. He was arrested on February 28, 2017, on a petition to revoke conditional discharge for domestic battery against the minors' mother. Respondent testified that he has been in a relationship with the minors' mother for 17 years and lives with her but denied having any knowledge of her drug use. He learned that J.H., Jaz. H. and Jazay. H. were born exposed to drugs shortly after their births.

¶ 7 On June 6, 2017, the adjudicatory hearing was held. Respondent stipulated to the allegations against him. The trial court entered an order of adjudication, finding that the minors

were neglected due to an injurious environment. The court admonished respondent to cooperate with DCFS, comply with the service plan, and correct the conditions that caused the minors to be in care, or risk termination of his parental rights.

¶ 8 On June 20, 2017, a report was filed by Anayelit Alcaide, from Guardian Angel Services, the caseworker for the family. According to Alcaide's report, respondent completed a substance abuse assessment and was referred to outpatient substance abuse treatment. Respondent failed to attend his first week of treatment. Out of seven scheduled drug tests, respondent completed two. He tested positive for cocaine on May 3, 2017, tested negative for all substances on June 1, 2017, and missed tests scheduled for April 5, April 11, April 13, May 19, and June 19, 2017.

¶ 9 On July 7, 2017, the Illinois Department of Children and Family Services (DCFS) Service Plan was filed with the court. The plan required respondent to complete a domestic violence abuse program and a substance abuse program. Respondent's progress toward completing a substance abuse program was "unsatisfactory", according to Alcaide because respondent missed his first week of treatment and was warned that if he missed any more classes, he would be removed from the program. Respondent had completed only two of eight required drug tests.

¶ 10 The dispositional hearing was held on July 11, 2017. Respondent was present for the hearing and represented by counsel. No testimony was provided by any party, but the State introduced several exhibits into evidence, including Alcaide's June 20, 2017 report, toxicology reports, the DCFS Service Plan, and the DCFS Integrated Assessment. Respondent's counsel argued that the court should not find respondent unfit because he had started, but not yet completed, substance abuse counseling.

¶ 11 The court found that it was in the best interests of the minors to be made wards of the court because both parents failed to complete substance abuse treatment and other services, including domestic violence and parenting classes. The court found respondent unfit because he failed to complete the services ordered by DCFS. The court again admonished respondent to cooperate with DCFS, comply with the service plan, and correct the conditions that caused the children to be in care, or risk termination of his parental rights. The court did not advise respondent that he could appeal the dispositional order.

¶ 12 On October 20, 2017, Alcaide filed a report with the court, indicating that respondent failed to provide proof of employment and did not communicate well with her. Respondent missed drug treatment classes on June 26 and 28, 2017, and missed parenting classes on June 30 and July 7, 2017. Additionally, defendant tested positive for cocaine four times and missed six visits with the minors.

¶ 13 On March 16, 2018, Alcaide filed a subsequent report, indicating that respondent tested positive for cocaine on January 1 and February 26, 2018, and missed drug tests on March 2 and 9, 2018. Respondent began attending domestic violence classes on January 6, 2018, and had completed 6 of 26 domestic violence classes.

¶ 14 On April 11, 2018, the State filed a petition to terminate respondent's parental rights. The petition alleged that respondent (a) failed to maintain a reasonable degree of interest, concern and responsibility as to the children's welfare, (b) failed to make reasonable efforts to correct the conditions which were the basis for removal of the children during the 9-month period of June 6, 2017 to March 6, 2018, and (c) failed to make reasonable progress toward the return of the children within 9 months of adjudication of abuse or neglect.

¶ 15 On June 21, 2018, a hearing on the petition was held. Following the hearing, the trial court found by clear and convincing evidence that respondent was unfit based on all of the allegations in the petition. The court explained that respondent had not yet demonstrated sobriety and had not completed any of the services contained in the service plan.

¶ 16 On July 23, 2018, the trial court held a best-interests hearing. Following the hearing, the trial court found that it was in the minors' best interests to terminate respondent's parental rights.

¶ 17 ANALYSIS

¶ 18 Respondent argues that the trial court's dispositional order must be reversed because the trial court failed to advise him of his appeal rights when it entered that order.

¶ 19 Section 1-5(3) of the Act (705 ILCS 405/1-5(3) (West 2016)) requires courts to (1) explain the nature of the proceedings, (2) inform the parties of their rights, (3) admonish parents that they "must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights," and (4) inform the parties of their appeal rights. *Id*. Specifically, section 1-5(3) provides in pertinent part: "Upon an adjudication of wardship of the court ***, the court shall inform the parties of their right to appeal therefrom as well as from any other final judgment of the court." 705 ILCS 405/1-5(3) (West 2016).

¶ 20 While it is error for a court not to admonish parents of their rights under the Act, such an error does not necessarily require reversal. *In re Moore*, 87 Ill. App. 3d 1117, 1120 (1980); see also *People v. Beck*, 190 Ill. App. 3d 748, 753 (1989) (court's error in failing to admonish parents of their rights was harmless); *In Interest of D.M.C.*, 107 Ill. App. 3d 902, 906 (1982) (failing to admonish parties regarding their rights, while error, was harmless because it did not prejudice them). A harmless-error analysis is appropriate when a trial court fails to properly

admonish a respondent pursuant to section 1-5(3) of the Act because the primary purpose of the proceedings is "to protect the best interests of the children." *In re Kenneth F.*, 332 Ill. App. 3d 674, 679 (2002). "An error that prejudices no one should not prevent children, who are the objects of these proceedings, from attaining some level of stability in their lives." *Id*. at 679-80.

¶ 21 The interest of parents in the care, custody, and control of their children is a recognized fundamental right. *In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 31. However, "even an error of constitutional dimension may be deemed harmless." *Kenneth F.*, 332 Ill. App. 3d at 680. An error is harmless if the respondent cannot show that the outcome of the proceeding would have been different if the error had not occurred. See *Beck*, 190 Ill. App. 3d at 753.

¶ 22 "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 interests of the minor and the public." 705 ILCS 405/3-23(1) (West 2016). Once a minor is adjudged a ward of the court, the trial court must determine if the minor's parents are unfit or unable "to care for, protect, train or discipline the minor or are unwilling to do so." 705 ILCS 405/2-27(1) (West 2016).

¶ 23 A trial court's determination that a parent is unfit will be reversed on appeal only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). A reviewing court gives deference to the trial court's findings of fact and will not substitute its judgment for that of the trial court. *A.W.* 231 Ill. 2d at 104.

¶ 24 Where a parent has begun services ordered pursuant to a DCFS service plan but has not yet completed them, a trial court's finding of unfitness is not against the manifest weight of the evidence. See *In re R.R.*, 409 Ill. App. 3d 1041, 1047 (2011); *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). This is especially true where the services include drug treatment and domestic violence counseling. See *in re K.R.*, 356 Ill. App. 3d 517, 523 (2005). "Until respondent takes responsibility to eliminate drugs and domestic violence from [his] own life, [he] cannot provide a safe, nurturing environment for [his children]." *Id*.

¶ 25 Here, respondent does not and cannot show that the outcome of this case would have been different if he had been admonished of his right to appeal the trial court's dispositional order. At the dispositional hearing, the trial court found respondent unfit to care for the minors because he failed to complete the services ordered by DCFS, including drug treatment, domestic violence classes and parenting classes. The only service respondent was engaged in at the time of the dispositional hearing was drug treatment, but he had already missed two sessions and was warned that he would be dropped from the program if he missed anymore. Respondent had also missed six out of eight drug drops, and of the two he completed, one was positive for cocaine.

¶ 26 The trial court's dispositional order was not against the manifest weight of the evidence and, therefore, would have been affirmed on appeal. See *A.W.*, 231 Ill. 2d at 104. Thus, while the court erred in failing to admonish respondent regarding his appeal rights, respondent was not prejudiced. Where, as here, it is clear that the outcome of the case would have remained the same if the proper admonishments had been given, the court's failure to properly admonish respondent is harmless error. See *In re Kenneth F.*, 332 Ill. App. 3d at 680; *D.M.C.*, 107 Ill. App. 3d at 907.

¶ 27 The judgment of the circuit court of Will County is affirmed.

¶ 28 Affirmed.