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2018 IL App (4th) 180117-U

NO. 4-18-0117

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 17, 2018

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

<i>In re A.W.-S.</i> , a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 16JA57
v.	)	
Laura Wilder,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Harris and Justice Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s order vacating wardship of A.W.-S., restoring guardianship to A.W.-S.’s father, and terminating proceedings was not against the manifest weight of the evidence.

¶ 2 In November 2016, the State filed a petition for adjudication of wardship, alleging K.W. (born June 23, 2004) and A.W.-S. (born December 4, 2011) were neglected in that their environment was injurious to their welfare when they resided with respondent mother, Laura Wilder, due to exposure to domestic violence between respondent and her paramour, Colby Strack. 705 ILCS 405/2-3(1)(b) (West 2016). This appeal only involves A.W.-S.

¶ 3 In March 2017, the trial court entered an adjudicatory order finding K.W. and A.W.-S. neglected after respondent stipulated the environment was injurious to their welfare. Following a dispositional hearing that same month, the court entered a dispositional order finding respondent unfit and unable to care for her children, the main reason being her continued

relationship with Strack. The court removed custody and guardianship of the children from respondent and placed guardianship with the Department of Children and Family Services (DCFS). The court granted custody of A.W.-S. to her father, Dustin Scaff. Respondent appealed, and this court affirmed. *In re K.W.*, 2017 IL App (4th) 170188-U.

¶ 4 In February 2017, following a third permanency hearing, the court found respondent unfit to exercise custody and guardianship of A.W.-S. The court vacated its wardship of A.W.-S., restored guardianship to Scaff, and terminated proceedings.

¶ 5 Respondent appeals, arguing the trial court's order vacating wardship of A.W.-S., restoring guardianship to A.W.-S.'s father, and terminating proceedings was contrary to the manifest weight of the evidence. We affirm.

¶ 6 I. BACKGROUND

¶ 7 A. Initial Proceedings

¶ 8 In November 2016, the State filed a petition for adjudication of wardship, alleging K.W. and A.W.-S. were neglected because their environment was injurious to their welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2016)) in that the children were exposed to domestic violence between respondent and Strack. DCFS opened an intact case, leaving the minors in respondent's care.

¶ 9 In February 2017, the trial court held an adjudicatory hearing. At the hearing, respondent, while present with counsel, offered to stipulate to the allegations of neglect in the petition. The court accepted respondent's stipulation as knowing and voluntary. As part of its factual basis, the State introduced two police reports, dated May 10, 2016, and October 14, 2016, reflecting domestic disturbance calls to respondent's residence following incidents involving respondent and Strack.

¶ 10 In March 2017, the trial court entered an adjudicatory order finding K.W. and A.W.-S. neglected because their environment was injurious to their welfare. See 705 ILCS 405/2-3(1)(b) (West 2016). Following a dispositional hearing that same month, the court found respondent unfit and unable to care for her children due to her continued relationship with Strack. The court removed custody and guardianship of the children from respondent and placed guardianship with DCFS. The court granted custody of the children to their respective fathers. The court awarded respondent supervised visitation but ordered Strack not have contact with either of the children or be involved in any way with visitation.

¶ 11 Respondent appealed the trial court's dispositional order adjudicating the children neglected, finding respondent unfit, and making the children wards of the court, which this court docketed as case No. 4-17-0188. This court affirmed the trial court's dispositional order. *In re K.W.*, 2017 IL App (4th) 170188-U.

¶ 12 B. Permanency Hearings

¶ 13 1. *June 2017 Permanency Hearing*

¶ 14 In June 2017, DCFS filed a permanency-hearing report that indicated DCFS became involved following a October 2016 domestic-violence incident involving respondent and Strack. According to the report, there was a high risk of continued domestic violence because there had been prior domestic-violence incidents between respondent and Strack. Strack previously spent time in the Illinois Department of Corrections for domestic violence (Champaign County case No. 16-CF-646). Therefore, DCFS referred both respondent and Strack for domestic-violence counseling, among other services.

¶ 15 While the report indicated respondent had made reasonable efforts and satisfactory progress towards the goal of returning K.W. and A.W.-S. home, the report also

indicated respondent did not consistently attend counseling sessions. As to Strack, the report indicated he “was very limited with his reporting, appeared superficial with his engagement and denied any want or need for services.”

¶ 16 Respondent had supervised visitation for two hours each week with the children and telephone contact. Respondent attended all scheduled visits. However, visitation had to be moved from respondent’s home to the maternal grandparent’s home due to an incident where the children saw Strack from a distance after the trial court ruled Strack have no contact with the children.

¶ 17 K.S. and A.W.-S. remained with their respective fathers and both children were in counseling. Scaff maintained employment and was in the process of completing his court-mandated services. DCFS found the adults generally worked fairly well together co-parenting despite having a very rocky start. K.S. and A.W.-S. appeared to be doing well in the custody of their fathers.

¶ 18 The court-appointed special advocate (CASA) also filed a report. In the report, the CASA stated her greatest concern stemmed from the fact that respondent continued to reside with Strack and did not seem to understand the danger of allowing her children to be in his presence. The CASA explained respondent had a “lack of regard for rules, the law, or guidance from the Court and continues to do as she chooses.” Also, the CASA had a concern about the relationship between respondent and Scaff. The report noted an occasion in April 2017, when DCFS had to remove respondent from a meeting because she repeatedly disparaged Scaff.

¶ 19 The CASA recommended A.W.-S. remain in the care of her father. The CASA also suggested that visitation remain the same until respondent made better safety decisions for her children and showed better compliance with DCFS.

¶ 20 At the permanency hearing, the guardian *ad litem* (GAL) stated that respondent made some efforts but not reasonable progress. Respondent did not consistently attend counseling sessions and, while she had started domestic-violence counseling, she was not forthcoming while participating in classes. The GAL expressed concern with Strack's presence at some of the supervised visits, stating he failed to take the situation seriously. The GAL opined that both children appeared to be doing well living with their fathers.

¶ 21 The trial court found respondent made reasonable efforts but not reasonable and substantial progress toward restoring custody. The court concluded it was in the best interest of A.W.-S. for guardianship to remain with DCFS and custody to remain with her father. With respect to K.W., the court vacated wardship, granting custody and guardianship to K.W.'s father.

¶ 22 *2. November 2017 Permanency Hearing*

¶ 23 In November 2017, the trial court held a second permanency-review hearing. Prior to the second hearing, DCFS filed a permanency-hearing report that indicated respondent had made reasonable efforts and satisfactory progress toward the goal of returning A.W.-S. home. Respondent completed domestic-violence counseling, but she did not consistently attend regular counseling. Respondent started working as a quality assurance specialist for Aramark and attributed missed counseling sessions to work conflicts. Dr. Judy Osgood diagnosed respondent with posttraumatic stress disorder, persistent depressive disorder, personal history of partner violence, and parent-child relational problem. Respondent reported seeing a psychiatrist who prescribed her Effexor to combat her anxiety.

¶ 24 The report indicated that respondent and Strack continued to live together, and respondent had recently terminated a pregnancy. Strack continued to attend domestic-violence counseling and undergo monthly mood-stabilizer injections.

¶ 25 The CASA also filed a report before the review hearing. In the report, the CASA noted that although A.W.-S. performed well in kindergarten, she struggled to remain on par with the rest of her class. Therefore, Scaff implemented an achievement board to help A.W.-S. set and accomplish goals. In the CASA's opinion, Scaff provided a good, safe, and loving home for A.W.-S.

¶ 26 The CASA report also indicated that respondent and Strack continued to live together. During her visits with A.W.-S., respondent continued to foster in-person or telephonic contact between A.W.-S. and Strack. Respondent also continued her attempt to manipulate Scaff. For the reasons stated, the CASA recommended the court return guardianship of A.W.-S. to her father.

¶ 27 At the hearing, the GAL stated respondent made reasonable efforts and some progress during the reporting period. However, respondent did not consistently attend counseling. The GAL expressed concern that respondent continued to live with Strack, who attended domestic-violence counseling but continued to be "very controlling."

¶ 28 The GAL had no concerns with A.W.-S.'s father, explaining Scaff continues to do everything asked of him and A.W.-S. was doing well in his care. The GAL stated it was in A.W.-S.'s best interest to have two fit parents, but expressed concern over the age of the case.

¶ 29 The trial court found respondent made reasonable efforts, and reasonable and substantial progress towards restoration of custody. The court concluded that guardianship remain with DCFS, expressing concern that relinquishing guardianship to Scaff might result in a loss of needed services. The court awarded DCFS discretion to implement unsupervised visitation between respondent and A.W.-S.

¶ 30 *3. February 2018 Permanency Hearing*

¶ 31 In February 2018, the trial court held a third permanency-review hearing. Prior to the third hearing, DCFS filed a permanency-hearing report that indicated respondent made reasonable efforts and satisfactory progress toward the goal of returning A.W.-S. home. DCFS proposed the goal for A.W.-S. remain return home because everyone involved completed or continued to progress in their required services. The report noted that respondent and Strack recently signed a sixth-month lease on a new place to live. DCFS found A.W.-S. thrived in her father's care and that she enjoyed her new routine and structure.

¶ 32 The CASA also filed a report before the review hearing. In the report, the CASA expressed concern with the fact that respondent and Strack continued to live together and that respondent intended to reintroduce Strack into A.W.-S.'s life. While DCFS upgraded respondent's visitation to monitored visits with occasional short unsupervised trips into the community, the CASA found respondent's attendance at counseling inconsistent and recommended respondent's visitation not increase until she attended counseling on a regular basis. The CASA stated that if the court lifts the no-contact order, visitation between Strack and A.W.-S. needed direct supervision by DCFS. The CASA concluded Scaff remained the best placement for A.W.-S.

¶ 33 At the hearing, the GAL explained she had concerns because respondent continued her relationship with Strack, lived with him, and relied on him financially. The GAL stated that A.W.-S. reported she did not want to be at respondent's house, in part, because Strack is "mean." The GAL also expressed concern that respondent still failed to internalize how her relationship with Strack affected A.W.-S. Regarding visitation, the GAL stated the no-contact order with Strack should remain in place. Overall, the GAL found A.W.-S. and her father had a "very positive relationship."

¶ 34 The trial court found respondent made reasonable efforts but not reasonable and substantial progress toward the goal of return home. The court determined that after more than a year of proceedings, it was not in A.W.-S.'s best interests "to continue a search for return to custody of respondent mother." The court feared that returning custody to respondent would "force [A.W.-S.] into a somewhat custodial relationship with a person who she shouldn't live with, and that being Mr. Strack."

¶ 35 The trial court found respondent unfit to exercise custody and guardianship of A.W.-S. The court concluded it was not in A.W.-S.'s best interest to remain a ward of the court; rather, it was in her best interest for her father to have exclusive custody and guardianship. Accordingly, the court entered an order vacating its wardship of A.W.-S., discharging DCFS as guardian, and restoring guardianship to Scaff.

¶ 36 This appeal followed.

¶ 37 **II. ANALYSIS**

¶ 38 On appeal, respondent argues the trial court's order vacating wardship of A.W.-S., restoring guardianship to A.W.-S.'s father, and terminating proceedings was against the manifest weight of the evidence. We disagree and affirm.

¶ 39 Section 2-28 of the Juvenile Act sets forth the procedure for the trial court to review an abuse or neglect case through a series of permanency hearings. 705 ILCS 405/2-28 (West 2016). Permanency hearings "are simply further dispositional hearings, conducted in accordance with section 2-22(1) of the [Juvenile] Act, which governs how dispositional hearings are to be held." *In re S.M.*, 223 Ill. App. 3d 543, 547, 585 N.E.2d 641, 644 (1992).

¶ 40 Once the trial court enters initial findings of abuse or neglect, it is proper and consistent with the purpose of the Juvenile Act for the court to exercise broad authority "to

modify orders in a manner that serves the best interests of the minor.” *In re Terrell L.*, 368 Ill. App. 3d 1041, 1046, 859 N.E.2d 113,118 (2006). This court gives great weight to the trial court’s superior opportunity to observe the conduct and demeanor of the witnesses and the parties. *In re W.B., Jr.*, 213 Ill. App. 3d 274, 282, 571 N.E.2d 1120, 1126 (1991). “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.” *In re M.M.*, 2015 IL App (3d) 130856, ¶ 11, 40 N.E.3d 37.

¶ 41 After three permanency-review hearings, the trial court concluded it was in A.W.-S.’s best interest to modify its dispositional order by vacating wardship, restoring guardianship to her father, and terminating proceedings. Respondent argues the court’s dispositional findings regarding the best interests of A.W.-S. were against the manifest weight of the evidence. Specifically, respondent argues that with the help of therapy, consistent medication, and classes, both she and Strack are substantially better equipped to deal with differences by constructive means rather than by resorting to arguments and violence.

¶ 42 While the trial court took into consideration respondent’s progress through prior orders and written reports, the court found that respondent failed to deal with the overarching issue affecting restoration of custody, namely her continued relationship with Strack. The court stated,

“I’m convinced by what I read and what I’ve seen that that is not in the best interests of [A.W.-S.], and to continue a search for return to custody of respondent mother is not in her best interests, because it, in essence, would force her into a somewhat custodial relationship

with a person who she shouldn't live with, and that being Mr. Strack.”

¶ 43 Respondent not only continued her relationship with Strack, but respondent lived with him and relied on him financially. Respondent also continued to foster contact between Strack and A.W.-S. despite the no-contact order. The CASA expressed concern that respondent did not understand the danger of having Strack in the presence of her children, explaining that she had a “lack of regard for rules” and “continues to do as she chooses.” The GAL also explained respondent failed to internalize how her relationship with Strack affected A.W.-S. Respondent continued to live with Strack despite the fact that he remained “very controlling” even after attending counseling services. In fact, right before the third permanency-review hearing, respondent and Strack signed a new housing lease.

¶ 44 Respondent also did not consistently attend counseling sessions. Prior to all three permanency-review hearings, her attendance was inconsistent. Before the third permanency-review hearing, she cancelled 10 sessions. Respondent completed domestic-violence counseling but was not forthcoming while participating in classes. Strack attended court-mandated services but “was very limited with his reporting, appeared superficial with his engagement and denied any want or need for services.”

¶ 45 While DCFS found at the third permanency-review hearing that respondent made reasonable efforts and satisfactory progress toward the goal of returning A.W.-S. home, the trial court disagreed. Even if respondent and Strack are now better equipped than they previously were to deal with differences by constructive means rather than by resorting to arguments and violence, the court determined that does not mean it is in A.W.-S.’s best interest to restore

custody to respondent and force A.W.-S. to have a relationship with Strack. The court found A.W.-S. has “a fit, able, and willing parent, that being her father, with whom to reside.”

¶ 46 The trial court determined Scaff was better suited to care for A.W.-S. because Scaff did everything asked of him and created a safe and healthy home for A.W.-S. When A.W.-S. struggled in school, Scaff took extra steps to help A.W.-S. improve through the implementation of an achievement board. The consensus among the CASA, the GAL, and DCFS was that A.W.-S. flourished in her father’s care and enjoyed her new routine and structure.

¶ 47 Finally, respondent disagrees and argues it is in A.W.-S.’s best interest to continue efforts toward unification. Respondent asserts that the trial court did not explicitly cite any best interest factors in making its ruling. See 705 ILCS 405/1-3(4.05) (West 2016). However, “the court need not articulate any specific rationale for its decision.” *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55, 940 N.E.2d 246, 255 (2010). After more than a year of review proceedings from which the foregoing information emerged, the court became convinced it was not in A.W.-S.’s best interest to continue to wait for respondent mother to reach the point that return to her became likely. The court, by its decision, addressed the physical safety of A.W.-S. and her need for permanence.

¶ 48 Given the circumstances, we conclude the trial court’s determination vacating wardship of A.W.-S., restoring guardianship to her father, and terminating proceedings was not against the manifest weight of the evidence. Accordingly, we affirm the court’s judgment.

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, we affirm the trial court’s judgment.

¶ 51 Affirmed.