

NOTICE

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FILED

July 23, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 180220-U
NOS. 4-18-0220, 4-18-0221 cons.

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

<i>In re</i> D.A. and I.A., Minors,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Champaign County
Petitioner-Appellee,)	No. 17JA67
v. (No. 4-18-0220))	
Jessica Alvarez,)	
Respondent-Appellant).)	
-----)	
<i>In re</i> D.A. and I.A., Minors,)	
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0221))	Honorable
Carlos Alvarez,)	John R. Kennedy,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s finding of wardship was not against the manifest weight of the evidence, and its dispositional order was not an abuse of its discretion.

¶ 2 In December 2017, the State filed a petition for adjudication of neglect, which, in part, alleged (1) D.A. (born June 11, 2007) was abused in that a parent inflicted upon him physical injury by other than accidental means (705 ILCS 405/2-3(2)(i) (West 2016)), and (2) I.A. (born August 18, 2010) was neglected in that his environment was injurious to his welfare due to exposure to excessive corporal punishment (705 ILCS 405/2-3(1)(b) (West 2016)). At a

February 2018 adjudicatory hearing, respondent mother, Jessica Alvarez, stipulated to the allegations of neglect in count III of the petition. Respondent father, Carlos Alvarez, stipulated to the allegations of neglect and abuse in counts I and III of the petition. At a March 2018 dispositional hearing, the trial court (1) made D.A. and I.A. wards of the court, (2) ordered the children remain in the custody of respondent mother, whom it determined to be fit, and (3) placed guardianship with the Illinois Department of Children and Family Services (DCFS). The court found respondent father unfit and removed custody and guardianship of the children.

¶ 3 Respondent parents filed separate notices of appeal, and this court consolidated the cases. On appeal, Respondents argue (1) the trial court's findings are against the manifest weight of the evidence, and (2) the dispositional order was an abuse of the court's discretion. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The State's Petition for Adjudication of Wardship

¶ 6 In its petition, the State alleged (1) D.A. was abused in that a parent inflicted upon him physical injury by other than accidental means (count I), (2) D.A. was neglected where his environment was injurious to his welfare when he resided with respondent mother in that she failed to protect him from excessive corporal punishment (count II), and (3) the minors were neglected where their environment was injurious to their welfare when they resided with respondent mother and respondent father in that said environment exposed the minors to excessive corporal punishment (count III).

¶ 7 B. The February 2018 Adjudicatory Hearing

¶ 8 At the adjudicatory hearing, respondent mother stipulated to count III and respondent father stipulated to count I and count III. The State moved to dismiss count II and

amend count III by removing the minor, D.A., so count III applied only to I.A. The trial judge found the stipulations to be knowing, voluntary, and supported by a factual basis as provided by a November 29, 2017, police report with attached photographs.

¶ 9 The police report alleged that on November 20, 2017, the assistant principal at D.A.'s school reported to DCFS that D.A. came to school with bruises on his face. Dr. Kathleen Buetow examined D.A. and provided photographs to the investigating detective. The police report continued as follows:

“[The detective] viewed the digital photos and observed the bruises in the form of lines on the left side of [D.A.]’s face, which appeared to be consistent with having been struck with an open hand. [The detective] also observed bruises in the form of wider lines on [D.A.]’s left buttocks and hip area, which appeared to be consistent with having been struck with the wide side of a belt. There appeared to be at least two separate strike marks to [D.A.]’s buttocks and hip area, with one of the two being more significantly bruised than the other. The bruises to [D.A.]’s face appeared to be a single strike, which left multiple simultaneous bruises.”

¶ 10 Respondent mother told the detective that she and respondent father had been together for 12 years and married for the last 5 years. Respondent mother, D.A., and I.A. all provided to the detective generally consistent accounts of what happened on the evening of November 17, 2017, except only D.A. described how respondent father punished him.

¶ 11 On November 17, 2017, respondents told D.A. and I.A. to fold laundry before dinner. Respondent father went upstairs and found the children playing on their cellular

telephones. Respondent father took the telephones away and the three of them returned downstairs. D.A., frustrated by losing his phone, told respondent father he hoped the family dog would bite respondent father's face. The dog had a history of aggression toward respondent father.

¶ 12 Subsequently, respondent father picked D.A. up and forcefully took him upstairs. Once upstairs, respondent father slapped D.A. across the face with an open hand then removed his belt and struck D.A. three times on his buttocks and hip. D.A. stated that his father had hit him before with a belt but never so hard that he had a bruise. I.A. told the investigating detective that he had been "whooped" with a belt before. The next day, respondent mother asked D.A. how he got the bruises and D.A. told her respondent father slapped his face and hit his buttocks with a belt. Respondent mother took photographs on her phone of D.A.'s injuries. She stated, "she believed [D.A.] needed a spanking; however, she believed [respondent father] 'had gone too far.' "

¶ 13 Respondent mother told the detective that respondent father typically disciplined the children and used a belt to discipline both D.A. and I.A. on multiple occasions. She stated the incident on November 17, 2017, was the first time she observed bruises from a spanking. The detective asked respondent mother if she recalled any other previous incidents with respondent father and she described an incident in May 2017.

¶ 14 On May 20, 2017, respondents were arguing when the family dog ran into the room. Respondent father grabbed the dog and it bit his hand. Respondent father then threw the dog onto the floor and stated he was going to "kill the dog." Respondent father went downstairs and returned with a knife in each hand. Respondent mother grabbed the dog away from respondent father. Respondent mother and the children then drove the dog to her father's house,

while respondent father calmed down. Once respondent mother and the children returned home, respondent mother observed a cut or stab mark in the bathroom wall and believed respondent father must have stabbed the wall with one of the knives.

¶ 15 Based on the factual basis, the trial court accepted respondents' stipulations. The court dismissed count II and accepted the State's amendment to count III.

¶ 16 C. The Dispositional Report

¶ 17 On March 9, 2018, Madison Parada, an intact family worker for the Center for Youth and Family Solutions (CYFS), submitted a dispositional report. The report indicated that on January 26, 2018, CYFS opened an intact family case while Megan McNeal from DCFS investigated the allegations of neglect and abuse stemming from the November 17, 2017, incident. On February 8, 2018, McNeal finished the investigation. DCFS found the allegations against respondent mother unfounded but indicated the allegations against respondent father.

¶ 18 On January 1, 2018, DCFS established a monitored safety plan where respondent father resided outside the home and had supervised visitation with D.A. and I.A. every night from 5 p.m. to 8 p.m. Once McNeal finished the investigation, Parada monitored the safety plan. On February 20, 2018, CYFS revised the safety plan so that respondent father could move back into the home, but it required respondent mother or his mother-in-law to supervise his interactions with D.A. and I.A. CYFS revised the safety plan due to respondent father's participation in services and DCFS finding the allegations of abuse against respondent mother unfounded.

¶ 19 The report indicated that, in February 2018, D.A. and respondents were to start family counseling. I.A. would not be included in counseling because of his age and concerns that other children in the group could have a negative influence on him. Further, respondent

mother requested family counseling and individual counseling for D.A. Respondent father successfully completed an anger-management class at Prevention and Treatment Services. Respondent father also started a 25-week partner-abuse intervention program.

¶ 20 At the conclusion of the report, CYFS recommended that guardianship and custody of D.A. and I.A. remain with respondents and the family continue with intact family services. The report stated, “[b]oth parents had been proactive in entering services during the investigation and prior to the intact case beginning.” Respondents also agreed to keep the intact case open should the court close the juvenile case, because they believed preventative services would be helpful to their family. Ultimately, CYFS recommended that the court close the case or grant wardship without removing custody or guardianship from respondents, to allow the family to have continuity of services.

¶ 21 D. The March 2018 Dispositional Hearing

¶ 22 At the dispositional hearing, after hearing recommendations of counsel, the trial court made D.A. and I.A. wards of the court, ordered the children remain in the custody of respondent mother, and placed guardianship with DCFS. The court found respondent father unfit and removed the children from his custody and guardianship. Based on respondent father’s learned-parenting methods and respondent mother’s acceptance of those methods, the court ordered respondents complete any course of counseling, education, or treatment recommended by DCFS. The court also ordered respondents to refrain from the use of corporal punishment. The court then set the cause for a permanency review hearing in June 2018.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, respondents argue (1) the trial court’s findings were against the manifest weight of the evidence and (2) the dispositional order was an abuse of the court’s discretion. We disagree and affirm.

¶ 26 Following an adjudication of neglect, the trial court must hold a dispositional hearing, during which “the court must first determine whether it is in the best interests of the minor and the public that the minor be made a ward of the court.” *In re M.M.*, 2016 IL 119932, ¶ 17, 72 N.E.3d 260 (citing 705 ILCS 405/2-21(2), 2-22(1) (West 2012)). If the court makes the minor a ward of the court, the court must fashion a dispositional order that best serves the interest of the minor. *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 40, 73 N.E.3d 1178; see also 705 ILCS 405/1-3(4.05) (West 2016). According to section 2-23(1)(a) of the Juvenile Court Act of 1987, the minor may be:

“(1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act.”
705 ILCS 405/2-23(1)(a) (West 2016).

¶ 27 In fashioning a dispositional order, the overriding concern is the best interest of the child. *In re Beatriz S.*, 267 Ill. App. 3d 496, 500, 641 N.E.2d 953, 956 (1994). “On review, a trial court’s decision ‘will be reversed only if the findings of fact are against the manifest weight

of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order.’ ” *Al. S.*, 2017 IL App (4th) 160737, ¶ 41 (quoting *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008)). “A court’s factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where its finding is unreasonable, arbitrary, or not based on the evidence presented.” *Al. S.*, 2017 IL App (4th) 160737, ¶ 41. An abuse of discretion occurs when no reasonable person would agree with the trial court’s decision. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177, 797 N.E.2d 687, 696 (2003). We afford great deference to the trial court’s findings because it is in a superior position to assess credibility and weigh evidence. *Al. S.*, 2017 IL App (4th) 160737, ¶ 41.

¶ 28 After reviewing the record, we cannot say the trial court’s findings were of a nature that the opposite conclusion is clearly evident or that its findings were unreasonable, arbitrary, or not based on the evidence presented. Here, the manifest weight of the evidence supported the court’s decision to make D.A. and I.A. wards of the court. In this matter, respondents stipulated to exposing D.A. and I.A. to excessive corporal punishment and respondent father admitted inflicting excessive corporal punishment on D.A. In addition, the police report from November 2017—containing statements from respondent mother, D.A., and I.A.—raised legitimate concerns about respondent father’s ability to manage his anger.

¶ 29 With respect to respondent mother, the court’s concern stemmed from the fact that she allowed respondent father’s behavior and failed to step up and take control of the household for D.A.’s and I.A.’s safety and well-being. The record shows that when respondent mother was a child her mother inflicted physical abuse as punishment on her brother and her. Respondent mother stated that DCFS investigated her mother once when her brother had a mark

on him, but the investigation ended after a caseworker showed her mother the proper way to spank.

¶ 30 Respondents argue they have done everything CYFS asked of them and have gone beyond the agency's requirements, including seeking referrals for continued intact services. However, the trial court found respondent father needed more time to learn, embrace, and incorporate proper parenting methods. The court also found respondent mother needed continued services to understand when she needed to seek help and separate the children and herself from violence.

¶ 31 We find based on the statutory best-interest factors, that the evidence shows the trial court's decision to make D.A. and I.A. wards of the court was appropriate. For example, in considering the physical safety and welfare of D.A. and I.A., the court properly determined wardship to be necessary in light of the evidence of respondent father's physical abuse against D.A. and respondent mother's response to that abuse. Although the trial court found respondent mother fit, it correctly determined wardship to be in the best interests of the minors, in light of the history of using physical abuse as punishment.

¶ 32 The dispositional order allowed D.A. and I.A. to remain in the care of respondent mother but removed custody from respondent father and granted DCFS guardianship of D.A. and I.A. Respondents assert this decision was an abuse of discretion. We find otherwise.

¶ 33 In *In re E.L.*, 353 Ill. App. 3d 894, 896, 819 N.E.2d 1191, 1193 (2004), the trial court, after adjudicating the children neglected, ordered the children to remain in the custody of respondent mother, whom it determined was fit, but placed guardianship with DCFS. The Third District held, "So long as custody remains with the [parent], we can perceive no error in also granting guardianship with DCFS." *Id.* at 898. "We recognize that the court can generally split

the guardianship and custody of a minor.” *In re T.L.C.*, 285 Ill. App. 3d 922, 926, 675 N.E.2d 228, 230 (1996).

¶ 34 Here, despite respondents cooperating with services, the fact remains that respondent father regularly used physical abuse as punishment in the home and respondent mother allowed such abuse to occur. Here, the trial court’s decision placing guardianship with DCFS to monitor the situation and ensure respondents continue to progress best served the minors by putting in place mechanisms to ensure the minors’ safety and health.

¶ 35 For these reasons, we cannot say the trial court’s findings, which led to its decision to make D.A. and I.A. wards of the court, were against the manifest weight of the evidence or that the trial court’s dispositional order was an abuse of discretion, despite the fact that the court found respondent mother fit. See, *e.g.*, *E.L.*, 353 Ill. App. 3d at 898.

¶ 36 III. CONCLUSION

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

¶ 38 Affirmed.