

**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).

2018 IL App (4th) 180309-U

NO. 4-18-0309

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

September 5, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re</i> F.F., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA11
v.	)	
Frank F.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's dispositional order removing guardianship and custody of F.F. from respondent father was not an abuse of the court's discretion.

¶ 2 In March 2018, the trial court adjudicated F.F. (born December 28, 2016) neglected after finding respondent father, Frank F., and respondent mother, Sandra F., subjected him to an environment injurious to his welfare as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2016)). Respondent mother is not a party to this appeal. In April 2018, the court entered a dispositional order making F.F. a ward of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent father argues the trial court's dispositional order removing custody of F.F. from respondent father was an abuse of its discretion. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5 The allegations of neglect—laid out in a shelter care report—stemmed from a November 6, 2017, report to DCFS that respondent father and respondent mother had been in court, seeking orders of protection against each other (Champaign County case No. 17-OP-662; Champaign County case No. 17-OP-664). Respondent father claimed respondent mother sprayed insecticide on the walls and baseboards of the home, as well as on F.F., to keep bugs off him. Respondent mother claimed respondent father had a ferret and allowed the ferret to chew on F.F. Each claimed the other used unspecified drugs. Subsequently, a judge denied both orders but directed a mandated reporter to file a DCFS hotline report.

¶ 6 Later in November 2017, DCFS located respondent father, who claimed that respondent mother and F.F. had left the shared residence on November 3, 2017, and he did not know their whereabouts. In early January 2018, DCFS located respondent mother in Clifton, Illinois. Subsequently, respondent mother and F.F. returned to Rantoul, Illinois. DCFS established a safety plan that placed F.F. with his maternal grandmother, Brenda M. While F.F. lived with Brenda M., respondent father and respondent mother had daily visitation with F.F.

¶ 7 On January 24, 2018, DCFS took protective custody of F.F. after respondent mother tested positive for marijuana. DCFS placed F.F. in relative care with Brenda M. who was already providing care for him under the safety plan.

¶ 8 On January 25, 2018, the State filed a petition for adjudication of neglect and shelter care against respondent father and respondent mother. The petition alleged F.F.'s environment was injurious to his welfare where (1) respondent father and respondent mother failed to correct the conditions which resulted in a prior adjudication of parental unfitness as to his sibling A.F. (count I), (2) respondent father and respondent mother exposed him to domestic

violence (count II), and (3) respondent mother exposed him to substance abuse (count III). The next day, the trial court found the State established probable cause—but not immediate and urgent necessity for temporary custody—and continued the safety plan.

¶ 9

#### A. Adjudicatory Hearing

¶ 10 In March 2018, an adjudicatory hearing commenced. The trial court took judicial notice of respondent father's prior DCFS case (Champaign County case No. 14-JA-21) where the court terminated respondent father's parental rights as to A.F. The parties presented the following testimony.

¶ 11

##### 1. *Karen Allen*

¶ 12 Karen Allen, a child protection specialist for DCFS, testified that in November 2017, she was assigned to F.F.'s case following a report of filings of mutual orders of protection. DCFS indicated the case for physical risk and injurious environment. Previously, in 2016, DCFS found respondent mother unfit because she put F.F. at risk of harm when she left the area.

¶ 13

Allen spoke with respondent father on several occasions, who, at first, did not know the whereabouts of respondent mother and F.F. Eventually, respondent father spoke with respondent mother, and he informed Allen that he told respondent mother that DCFS was looking for her, to which she said DCFS "could f\*\*\* off" and would not find her. Allen stated that after speaking with respondent mother, respondent father suspected she was intoxicated and expressed concern that she may be suicidal.

¶ 14

Allen testified that in the prior juvenile case, (Champaign County case No. 14-JA-21), respondent father had been required to participate in parenting education, complete domestic-violence classes, undergo an overall assessment, and obtain a mental health evaluation

and treatment. However, respondent father failed to participate in couples counseling and never completed parenting classes or followed up about his psychological evaluation.

¶ 15

### *2. Officer Sean Arie*

¶ 16 Sean Arie, a police officer for the Rantoul Police Department, testified that, on October 27, 2015, he was dispatched twice to respondent father's and respondent mother's residence for a domestic dispute. The first time, respondent father and respondent mother had been arguing over respondent father's desire to sleep and respondent mother keeping him awake. Officer Arie left after respondent mother agreed to go to a neighbor's house.

¶ 17

The second time, there had been a physical altercation. When Officer Arie arrived back at the residence, he witnessed respondent mother standing on the front porch of the residence with redness and swelling under her right eye. Respondent mother told Officer Arie that respondent father had hit her and choked her. Respondent father claimed respondent mother agreed to be polite if respondent father let her back into the residence, but when he did, she started arguing again. Respondent father told Officer Arie that respondent mother struck herself, as she had done in the past. Subsequently, Officer Arie arrested respondent father for domestic battery. Officer Arie testified that he had not had contact with respondent father or respondent mother since.

¶ 18

### *3. Respondent Father*

¶ 19 When the State called respondent father to testify about his order of protection, respondent father disclosed that when he filed his order of protection he was angry with respondent mother for taking F.F. and going to live elsewhere. Respondent father testified that respondent mother took good care of F.F. "[f]or the most part" and had not sprayed F.F. with insecticide.

¶ 20 Following the presentation of evidence, the trial court found the State proved all three counts of the petition.

¶ 21 B. Dispositional Hearing

¶ 22 In April 2018, the trial court held a dispositional hearing. The parties presented the following testimony.

¶ 23 1. *Brittany Baymon*

¶ 24 Brittany Baymon, an intact case manager for Children's Home and Aid (CHA), prepared and testified regarding the dispositional report. Baymon testified that an intact case opened on February 6, 2018. While Baymon did not conduct the integrated assessment at the opening of the case, she became involved in the case on February 15, 2018.

¶ 25 Baymon testified that she had met with respondent father nine times since becoming involved in the case. She indicated that respondent father was slow to engage in services and struggled with accepting responsibility for the domestic-violence issues with respondent mother. Both respondent father and respondent mother expressed their refusal to engage in domestic-violence services.

¶ 26 Baymon also observed that during visits respondent father and respondent mother argued the majority of the time. Brenda M. told Baymon she sometimes feared for her daughter's safety because respondent father had been violent in the past. Respondent mother reported that she had tried to leave respondent father and stay with her mother but that CHA advised her that would violate the safety plan.

¶ 27 Baymon testified to respondent mother's January 2, 2018, arrest for driving on a suspended or revoked license and driving under the influence of alcohol. As a result, DCFS

required respondent mother to complete random drug screens. The results of two of respondent mother's screens were adulterated and counted as positive screens.

¶ 28 After she observed him in Brenda M's care, Baymon described F.F. as a healthy, well-behaved one-year-old child. Baymon expressed concern about the clutter in Brenda M's residence. Specifically, Baymon testified F.F.'s crib was in the living room because the clutter and piles of "stuff" in other rooms only allowed a narrow path for walking. Baymon spoke to Brenda M. about removing the clutter or moving. Brenda M. told Baymon she was in the process of looking for other housing.

¶ 29 In her dispositional report, Baymon recommended the removal of custody and guardianship of F.F. from both parents and awarded DCFS custody and guardianship.

¶ 30 *2. Jessica Dixon*

¶ 31 Jessica Dixon, an intact case aid for CHA, had contact with respondent mother twice in April 2018. Dixon testified respondent mother told her respondent father got very angry when respondent mother said too much to Dixon, and he told her on many occasions that his life would be easier if he got rid of her and her mother. Dixon opined that respondent mother appeared scared of respondent father but not ready to leave the home. Respondent mother did not report to Dixon any acts of physical violence between respondent father and herself.

¶ 32 *3. Respondent Mother*

¶ 33 Respondent mother testified that she called for drug-screen instructions daily. As to the adulterated screens, she insisted that on those dates she only ingested coffee and denied taking any controlled substances since starting the screening process. Respondent mother also denied refusing to attend domestic-violence classes; rather, she stated she just had not yet made the call.

¶ 34 At the end of the hearing, the trial court found respondent father and respondent mother unfit, primarily due to their long history of domestic violence and their delay in engaging in services. The court determined making F.F. a ward of the court served F.F.'s best interests, as did granting custody and guardianship to DCFS.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, respondent father asserts the trial court's dispositional order removing custody of F.F. from him was an abuse of its discretion. We affirm.

¶ 38 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). Under section 2-23(1)(a) of the Juvenile Act, 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).

¶ 39 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)). The trial court abuses its discretion when the court's ruling is fanciful, arbitrary, unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re Alexis H.*, 401 Ill. App. 3d 543, 550-51, 929 N.E.2d 552, 560 (2010). 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.

¶ 40 After reviewing the record, we cannot say the trial court's findings and subsequent dispositional order removing custody and guardianship of F.F. from respondent father was arbitrary, fanciful, or unreasonable. Here, a major concern was respondent father's history of domestic violence. Respondent father and respondent mother had a longstanding violent and dysfunctional relationship. This was apparent through the orders of protection respondent father and respondent mother filed against each other, Officer Arie's testimony regarding a physical altercation between the two, and Baymon's testimony describing the interaction between respondent father and respondent mother during her visits. Also, the court, in part, adjudged F.F. neglected based on an environment injurious to his welfare due to exposure to domestic violence.

¶ 41 While respondent father admits the welfare of F.F. is of primary consideration at the dispositional phase, he argues that there was "no evidence" that the minor's safety or welfare

was jeopardized by living with him or respondent mother. Respondent father points to the shelter care hearing, where the court did not remove F.F. from either parent. This ignores the fact that the court was aware of the safety plan placing F.F. with Brenda M. The court simply continued the safety plan and F.F. remained in Brenda M's care. The trial court also noted that respondent father's and respondent mother's lack of interest in pursuing domestic-violence classes and other services led to its determination. As Allen testified, in a prior DCFS case regarding another child, respondent father failed to participate in the services required of him. In the present case, Baymon testified respondent father similarly refused to participate in domestic-violence counseling.

¶ 42 We find that the evidence shows the trial court's decision to remove custody and guardianship of F.F. from respondent father was appropriate. Pointedly, considering the physical safety and welfare of F.F., the court properly determined custody and wardship to be necessary in light of the evidence of respondent father and respondent mother's history of domestic violence and lack of engagement in services.

¶ 43 For these reasons, we cannot find the trial court's dispositional order granting DCFS guardianship and custody of F.F. was an abuse of discretion.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the trial court's judgment.

¶ 46 Affirmed.