

NOTICE

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2018 IL App (4th) 180365-U
NOS. 4-18-0365, 4-18-0366 cons.

FILED
September 24, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> H.S., a Minor,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 18JA1
v. (No. 4-18-0365))	
Jennifer S.,)	
Respondent-Appellant).)	
-----)	
<i>In re</i> H.S., a Minor,)	
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0366))	Honorable
Bradley S.,)	Thomas M. O’Shaughnessy,
Respondent-Appellant).)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not err by finding the minor neglected pursuant to respondents’ admission of the State’s allegation that the minor’s environment was injurious to his welfare.

¶ 2 In April 2018, the trial court adjudicated H.S. (born January 2, 2018) neglected after finding respondent mother, Jennifer S., and respondent father, Bradley S., 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)). In May 2018, the court entered a

dispositional order making H.S. a ward of the court and placing custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondents argue the trial court erred by finding H.S. neglected because the State did not prove abuse by a preponderance of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2018, the State filed a petition for adjudication of wardship, alleging H.S. was: (1) abused in that he was at substantial risk of physical injury by other than accidental means (count I) (705 ILCS 405/2-3(2)(ii) (West 2016)); (2) neglected in that his environment was injurious to his welfare due to the physical harm to his sibling by other than accidental means (count II) (705 ILCS 405/2-3(1)(b) (West 2016)); (3) neglected in that his environment was injurious to his welfare due to respondent mother's substance abuse (count III) (705 ILCS 405/2-3(1)(b) (West 2016)); and (4) neglected in that his environment was injurious to his welfare when he resides with respondent mother and respondent father due to their failure to correct the conditions that resulted in a prior adjudication of parental unfitness to exercise guardianship and custody of the minor's siblings (count IV) (705 ILCS 405/2-3(1)(b) (West 2016)).

¶ 6 In April 2018, the matter proceeded to an adjudicatory hearing. Counsel for respondent mother informed the trial court that respondent mother "would be admitting to [c]ount [IV], which is simply the injurious environment due to the failure of completing services and correcting the conditions that led the other children to be brought into care." Counsel for respondent father informed the court respondent father would make the same admission. The court admonished respondents, and it determined they freely and voluntarily made the admission.

The State presented a factual basis for the admission, representing that the evidence would show prior findings of parental unfitness and witnesses would testify that the parents had not corrected the conditions that led to DCFS involvement. The court found a factual basis to support the allegations in count IV, took judicial notice of the prior findings of parental unfitness, and accepted respondents' admissions. Accordingly, the court entered an adjudicatory order finding H.S. to be a neglected minor in that his environment was injurious to his welfare due to the failure to correct conditions that led to prior findings of parental unfitness.

¶ 7 Following a May 2018 dispositional hearing, the trial court determined making the minor a ward of the court served H.S.'s best interest. The court found respondents unfit and unable to care for H.S. based on the prior findings of abuse and neglect and the need for continued services to correct the conditions that led to DCFS involvement. Accordingly, the court entered an order finding respondents unfit, making H.S. a ward of the court, and placing custody and guardianship with DCFS.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent mother contends the trial court erred by "finding H.S. to be an abused minor because the [S]tate failed to demonstrate that his environment was injurious to his welfare because [respondent mother] had been adjudicated unfit for physical injury to another of her children." Specifically, respondent mother argues DCFS did not produce evidence showing a safety plan would not be better for H.S. than removing him from respondents' care. Respondent mother asserts the State failed to prove by a preponderance of the evidence that H.S. was an abused minor and the trial court should have dismissed the petition for adjudication of wardship.

¶ 11 Similarly, respondent father argues on appeal that the trial court erred by “finding H.S. to be an abused minor because the [S]tate failed to demonstrate that his environment was injurious to his welfare because H.S.’s siblings had been made wards of the court.” Respondent father echoes respondent mother’s arguments that (1) DCFS did not produce evidence showing a safety plan would not be better for H.S. than removing him from respondents’ care and (2) the State failed to prove H.S. was an abused minor and the trial court should have dismissed the petition for adjudication of wardship.

¶ 12 As an initial matter, we note the trial court found H.S. to be a neglected minor, not an abused minor. To the extent that respondents contend the court erred by finding H.S. to be neglected, we find respondents are estopped from challenging the court’s adjudication of neglect because they admitted to the allegations in count IV. “A party is estopped from taking a position on appeal that is inconsistent with a position the party took in the trial court.” *In re Stephen K.*, 373 Ill. App. 3d 7, 25, 867 N.E.2d 81, 98 (2007). Moreover, the record shows the State presented an adequate factual basis for the finding of neglect and the court took judicial notice of the prior findings of parental unfitness and accepted respondents’ freely and voluntarily made admissions to count IV of the petition for adjudication of wardship.

¶ 13 To the extent respondents challenge the trial court’s dispositional order, we find the record supports the court’s dispositional findings. “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 health, safety[,] and interests of the minor and the public.” 705 ILCS 405/2-22(1) (West 2016).

¶ 14 Here, testimony at the dispositional hearing established that at the time of the birth of H.S., respondents' other children remained in substitute care due to respondents' lack of progress in spite of participating in services. Respondents failed to acknowledge responsibility for severe abuse to L.S., one of the children already in care. In addition, respondents remained in a physically violent relationship, and the dispositional report indicated respondent father was arrested in January 2018 following a domestic-violence incident in which he hit respondent mother with a closed fist and choked her. Additionally, the dispositional report and testimony show both respondents have a history of mental-health problems. DCFS declined to recommend unsupervised visitation because of serious concerns about respondents' capacity to parent. Finally, the Court Appointed Special Advocate joined in DCFS's recommendation that the court make H.S. a ward of the court and grant custody and guardianship to DCFS. Thus, we find the record supports the trial court's dispositional findings. Accordingly, we affirm the judgment of the circuit court.

¶ 15 III. CONCLUSION

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

¶ 17 Affirmed.