

**NOTICE**

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2018 IL App (4th) 180471-U

NO. 4-18-0471

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 20, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re Z.A., a Minor</i>	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 18JA31
v.	)	
Terence A.,	)	Honorable
Respondent-Appellant).	)	John R. Kennedy,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed, ruling the trial court’s finding of unfitness was not against the manifest weight of the evidence and placing custody and guardianship of Z.A. with the Department of Children and Family Services was not an abuse of discretion.

¶ 2 In April 2018, the State filed a petition for adjudication of neglect regarding Z.A., the minor child of respondent, Terence A. In a May 2018 adjudicatory hearing, the trial court found Z.A. was neglected. In June 2017, the court conducted a dispositional hearing, determined Stephani S., Z.A.’s mother, and respondent were unfit, and made Z.A. a ward of the court, assigning guardianship and custody to the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court’s determination that he was unfit was against the manifest weight of the evidence and its removal of Z.A. was an abuse of its discretion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 According to the shelter care report, respondent and Stephani S., the birth parents of Z.A., were in a relationship off and on for about 10 years. Respondent admitted in the report that he used to do drugs but said he was “clean” when the two met at a Narcotics Anonymous meeting. Z.A. was born in 2014. Stephani S. claimed she was introduced to crack cocaine by respondent, who brought it home for them to use on her birthday in March 2017. Prior to that, she said the only substances she used were marijuana and alcohol, although Z.A.’s grandmother stated Stephani S. was in treatment programs twice in 2008 and once in 2009.

¶ 6 The shelter care report states Stephani S. said she moved with Z.A. to Milwaukee from Urbana around September 2017 to avoid respondent’s abusive behavior and to have a better life for her daughter. At some point, a visit was scheduled in Chicago so respondent could see Z.A. While in Chicago, they stayed with respondent’s sister. After the visit, Stephani S. went back to Milwaukee and, according to respondent, maintained telephone contact with respondent, talking about her crack cocaine use and her need for treatment. Around December 2017, Stephani S. relocated back to Urbana. According to Stephani S., respondent manipulated her into moving back. After she returned, she reported that respondent verbally and emotionally abused her until she once again moved out on March 4, 2018, and into a shelter on March 6, 2018. She reported the abuse was ongoing throughout their relationship. On March 4, the day she moved out, respondent was verbally abusive to Stephani S., pushed her, and then hit her while Z.A. was present within the home. This account is corroborated by Z.A., who said, “[D]addy hit mommy in [the] face” and then “mommy hit daddy.”

¶ 7 On March 18, 2018, DCFS received a report alleging Stephani S. was using crack cocaine and acting erratically around her child. A report on March 27, 2018, stated Stephani S. was using cocaine regularly and was living at Courage Connection, a local domestic violence

shelter. While living in the shelter, she would take her daughter to the “Crisis Nursery” so Stephani S. could use crack cocaine. The report also stated she was involved in a domestic violence relationship and was going to court for an order of protection the following week. DCFS received a report the next day alleging Stephani S. was battered by respondent in front of their child, Z.A. The report also alleged respondent smoked marijuana daily and the conditions of the home were deplorable. In the shelter care report, respondent admitted smoking marijuana in the past couple of months because of the stress of his relationship with Stephani S.

¶ 8 The shelter care report also stated Stephani S.’s drug test completed on March 25, 2018, tested positive for cocaine. Respondent’s sample tested positive for marijuana. Respondent lives with his uncle. While Stephani S. maintains both respondent and his uncle use drugs, respondent and his uncle both deny the uncle’s use of drugs. Stephani S. also stated the uncle’s home is in a condemnable condition and is infested with rats. Other witnesses indicate there may be mice in the home. The investigator who went to inspect the home noticed the front steps were collapsing and there were soft spots on the floor in front of the sink. Respondent showed an investigator a notice from the City of Urbana, which stated the front steps were unsafe and in need of correction.

¶ 9 In April 2018, the State filed a petition for adjudication of neglect, alleging Z.A. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016)) because she resides with Stephani S. and respondent and in that environment Z.A. is exposed to domestic violence. In an amended petition for adjudication of neglect filed the same day, the State alleged she was also neglected because she resides with respondent in an environment that exposes her to substance abuse.

¶ 10 In May 2018, at respondent's adjudicatory hearing, respondent stipulated to the count alleging Z.A. was neglected based on domestic violence between respondent and Stephani S. in the home where Z.A. resided. In June 2018, the court conducted a dispositional hearing, and respondent was the only witness who testified, with the State relying on the dispositional report.

¶ 11 At the dispositional hearing, respondent said he is a behavioral intervention specialist for an alternative school, working anywhere from 40 to 60 hours a week since he started in September 2016. He stated the school trained him and he has 25 years of experience working with at-risk youth. In his job, he has the ability to restrain the children, but whenever possible, he tries to deescalate the situation and use his "interpersonal relationships" to avoid the "physical part of the job as much as [he] can." His job entails supervising the children, ranging from 8- to 20-year olds, helping with daily living skills, programming, and serving meals. At times, part of his job encompasses direct care transport, where he will travel across southern Illinois to pick up children and do supervised or unsupervised visits and take case notes. He said he has a flexible schedule, which he sets, and he adjusted it recently to make time for the meetings and services he may have to attend because of this case. He also financially supports his children in three different households. During his previous job in Milwaukee, he received a certificate after completing the "Bureau of Milwaukee Child Welfare Training for New Staff Intervention Systems." In that job, he did removals, reunifications, transfers of guardianship, terminations of parental rights, and adoptions during the two years he worked there.

¶ 12 Respondent admitted he has a history with the criminal justice system, but his last arrest was in 2006. He also testified about his past drug use but says he had a "complete lifestyle change" in December 2006 when he entered a residential facility for men in Milwaukee. He was clean for 7 1/2 years and met Stephani S. in a Narcotics Anonymous meeting. He said the only

reason Stephani S. was living with him was because of Z.A. He said he made the hotline call because Stephani S. is a “pathological liar” and he was trying to save his daughter.

¶ 13 Respondent says he took Welbutrin to assist with stress and to quit smoking tobacco but stopped a few years ago because taking pills makes him uncomfortable. Due to the stressful nature of his job and relationship with Stephani S., he tried to do “some healthy things” to deal with the stress.

¶ 14 On cross-examination, he admitted he left Z.A. with her mother in Milwaukee when he went back to Champaign County in September 2016. He stated he left because the relationship with Stephani S. was unhealthy, although he had tried to stick around for Z.A. When describing the relationship, he said Stephani S. had always used substances. Although he testified his current job does random drug testing, when pressed, he admitted the last time he was tested was when he was hired. When asked about the criminal history of his uncle, whom he lives with, he was not aware of any convictions or arrests. Prior to the hearing, he had five weekly visits with Z.A., and when he visited he tried to provide her with vegetables and fruits. However, according to the dispositional report, he had to be reminded on the May 29, 2018, visit to provide a meal for his daughter if he visits during mealtime.

¶ 15 In the dispositional report, respondent admitted to domestic partner violence to which Z.A. was exposed throughout her parents’ relationship. He also stated stress is a trigger for his drug use and reported using marijuana about a month prior to the May 5, 2018, interview for the report. He tested positive for marijuana on May 4, 2018, but his four subsequent weekly drug tests came back negative. The report stated the primary concerns impacting respondent’s ability to parent are his lack of involvement in providing primary care to Z.A., his lack of demonstrated ability and willingness to provide protection for his daughter, and his marijuana use since

DCFS's involvement. When an investigator came to the home, her foot got stuck on the stairs of the front porch, and she had to have respondent help her up. She reported the inside of the home "wasn't clean" and Z.A. did not have a bed or bedroom. On June 1, 2018, respondent said he planned to move into a new apartment with his current girlfriend by the end of June. This was the first mention of a girlfriend as he denied having a paramour on April 26, 2018. He admitted they had begun dating since the case opened around the beginning of April. The agency, which prepared the report, had concerns about respondent's hostile demeanor and honesty with them. It also noted concerns about his lack of completion of domestic violence and substance abuse assessments.

¶ 16 The State recommended respondent be found unfit and custody and guardianship of Z.A should be placed with DCFS. The State noted respondent testified he works in the child welfare system but still left Z.A. with Stephani S. when he knew she was using illegal substances. The State was concerned he was doing nothing to protect Z.A. from situations "she has no way of protecting herself from." The guardian *ad litem* recommended custody and guardianship be placed with DCFS due to respondent's lack of consistent cooperation throughout the case. Although he had cooperated with the integrated assessment, he failed to complete his domestic violence and substance abuse assessment. Also, in the dispositional report, respondent acknowledged he has a history of physical aggression in various relationships and has a recent history of substance abuse. Moreover, his current residence was not an appropriate place for a child to reside due to its physical condition.

¶ 17 Respondent's attorney argued he was fit based on his experience with child welfare and that his issues of substance abuse were behind him. As this was a joint dispositional hearing for both parents, Stephani S.'s attorney also made a recommendation, wherein her

attorney believed respondent was unfit because he posed a danger to Stephani S. and Z.A. The attorney said respondent's past behavior revealed a lack of parenting involvement with any of his children. Instead, he simply paid child support. In addition, he had never cared for Z.A.

¶ 18 The trial court found it was in the best interest of the public and Z.A. for her to be adjudicated neglected and made a ward of the court. The court found respondent unfit and custody and guardianship was placed with DCFS. Respondent was given the standard admonishments to cooperate fully and completely with DCFS and the court appointed special advocate, comply with the terms of a service plan, and correct the conditions that required Z.A. to be adjudicated neglected.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Respondent argues the trial court erred by declaring him unfit and finding it was in Z.A.'s best interest to be removed from his custody.

¶ 22 “[C]ases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances.” *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 747 (2004). The State bears the burden to prove the allegations of neglect by a preponderance of the evidence. *In re A.P.*, 2012 IL 113875, ¶ 17, 981 N.E.2d 336. On review, a trial court's finding of neglect will not be reversed unless it is against the manifest weight of the evidence, *i.e.*, “the opposite conclusion is clearly evident.” *A.P.*, 2012 IL 113875, ¶ 17. “A proceeding for the adjudication of wardship ‘represents a significant intrusion into the sanctity of the family which should not be undertaken lightly.’ ” *Arthur H.*, 212 Ill. 2d at 463 (quoting *In re Harpman*, 134 Ill. App. 3d 393, 396-97, 480 N.E.2d 873, 875 (1985)). “[T]he paramount consideration is the best interests of the child.” *A.P.*, 2012 IL 113875, ¶ 18. A trial

court must employ a “two-step process to decide whether a minor should become a ward of the court.” *A.P.*, 2012 IL 113875, ¶ 18. Step one is the adjudicatory hearing on the petition for adjudication of wardship where the court should consider “whether the minor is abused, neglected, or dependent.” 705 ILCS 405/2-18(1) (West 2016). The purpose of the hearing is to determine if the allegations in the petition for an adjudication of neglect are supported by a preponderance of the evidence. 705 ILCS 405/1-3(1) (West 2016). “ ‘[N]eglect’ is defined as the ‘failure to exercise the care that circumstances justly demand.’ ” *Arthur H.*, 212 Ill. 2d at 463 (quoting *In re N.B.*, 191 Ill. 2d 338, 346, 730 N.E.2d 1086, 1091 (2000), quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624, 104 N.E.2d 769, 773 (1952)).

¶ 23           If the court finds the minor is abused, neglected, or dependent, the court moves to step two, the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21. At that hearing, the court determines “whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court.” *A.P.*, 2012 IL 113875, ¶ 21. The court may place guardianship and custody with DCFS if the court determines the parents are unfit, for some reason other than financial circumstances alone, “to care for, protect, train or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents.” 705 ILCS 405/2-27(1) (West 2016). “Section 2-27(1) of the Act does not authorize placing a ward of the court with a third party absent a finding of parental unfitness, inability, or unwillingness to care for the minor.” *In re M.G.*, 2018 IL App (3d) 170591, ¶ 11, 94 N.E.3d 1287. On review, a trial court’s determination of unfitness pursuant to section 2-27(1) of the Juvenile Court Act of 1987 “will be reversed 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*



*T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991); see also *In re Lakita B.*, 297 Ill. App. 3d 985, 994, 697 N.E.2d 830, 836 (1998).

¶ 24 Here, Z.A. was taken into protective custody based on her mother’s crack cocaine use and her parents’ domestic violence, which respondent admitted. In addition, respondent tested positive for marijuana in early May after this case began, purportedly to deal with the stress of this case, though he has been clean in subsequent drug tests. Also, the shelter care report and the guardian *ad litem* mentioned the home was in an unsuitable condition for a child. An investigator who went to inspect the premises reported the steps were collapsing, and another investigator got her foot stuck in the steps. Moreover, respondent clearly failed to “exercise the care that circumstances justly” demanded when he allowed his daughter to go to Milwaukee with Stephani S., knowing Stephani S. was still using crack cocaine. See *Lakita B.*, 297 Ill. App. 3d at 995 (finding respondent mother was unfit because she was responsible for the abuse of the minors in part because she failed to protect them from it). From the evidence, it is clear Z.A. was neglected, and the trial court’s finding of unfitness was not against the manifest weight of the evidence. For all these reasons, the court was justified in finding it was in the best interest of the child to be made a ward of the court and place her custody and guardianship with DCFS.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court’s judgment.

¶ 27 Affirmed.