FILED
January 24, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180642-U

No. 4-18-0642

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re H.N., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 18JA41
v.	)	
Olivier M.,	)	Honorable
Respondent-Appellant).	)	Brian J. Goldrick,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justice DeArmond concurred in the judgment.
Justice Cavanagh specially concurred.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) respondent's argument suggesting his admission of neglect was not knowingly and intelligently made was a nonstarter as respondent did not in fact make any such admission and (2) the trial court's finding respondent was unable to care for his daughter was not against the manifest weight of the evidence and, therefore, its decision to place the minor with a third party was neither an abuse of its discretion nor contrary to the policy of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 to 7-1 (West 2016)).

¶ 2 Respondent, Olivier M., appeals from the trial court's orders adjudicating his daughter, H.N. (born September 8, 2017), neglected and making her a ward of the court and placing guardianship and custody with the Department of Children and Family Services (DCFS). On appeal, respondent argues (1) his admission of neglect was not knowingly and intelligently made and (2) the trial court's finding he was unable to care for H.N. was against the manifest

weight of the evidence and, therefore, the decision to place H.N. with a third party was an abuse of the court's discretion and contrary to the policy of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2016)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Petition for Adjudication of Wardship and Shelter-Care Hearing

¶ 5 On April 9, 2018, the State filed a petition for adjudication of wardship, alleging H.N. was a neglected minor as defined by section 2-3(1)(d) of the Act (705 ILCS 405/2-3(1)(d) (West 2016)). The allegation was based on an April 7, 2018, incident where H.N.'s mother, Cynthia N., left H.N. unsupervised inside of a vehicle when Cynthia went shopping for approximately 10 to 15 minutes. Cynthia was arrested for child endangerment, and H.N. was taken into protective custody and placed with a traditional foster home. The petition named respondent as putative father of H.N.

¶ 6 At a shelter-care hearing that same day, respondent and Cynthia appeared and stipulated to probable cause for the filing of the petition and the existence of an immediate and urgent necessity for H.N. to be taken into care. The trial court entered an order granting DCFS temporary custody of H.N. The court also ordered respondent to submit to paternity testing.

¶ 7 B. Adjudicatory Hearing

¶ 8 On June 13, 2018, the trial court held an adjudicatory hearing. Respondent appeared with counsel. Cynthia admitted to the allegations in the State's petition. Based on that admission and a supporting factual basis, the court adjudicated H.N. neglected. The court also entered an order finding respondent to be the biological father of H.N.

¶ 9 C. Dispositional Hearing

¶ 10 On August 1, 2018, the trial court held a dispositional hearing. A dispositional report and an integrated assessment provided the court with the following relevant information. In 2015, respondent married. He and his wife had one son, who was two years old at the time of the dispositional hearing. In July 2016, respondent began an extramarital affair with Cynthia. In December 2016, respondent learned Cynthia was pregnant with H.N. Respondent informed his wife of the affair and Cynthia's pregnancy. Respondent and his wife remained together. Respondent "saw [H.N.] only on a few occasions" after she was born. Respondent and his wife had a second son, who was two months old at the time of the dispositional hearing. In the three months prior to the dispositional hearing, respondent had weekly visitation with H.N. Respondent's wife was initially hesitant to having any involvement with H.N. but later became supportive of her husband and expressed a desire to have H.N. be placed in their care. Respondent's wife and his two sons had not had any contact with H.N. as of the date of the dispositional hearing. The integrated assessment did not make any recommendations concerning respondent or his wife. The assessment noted respondent's actions did not cause H.N. to be brought into care and "there was no other report, information, or documentation available indicating that there was a concern related to [respondent's] ability *** to meet his children's well-being needs." The assessment also noted, however, H.N. "has had minimal interaction with [respondent]." The integrated assessment indicated H.N. performed close to the cutoff score on the gross-motor and problem-solving domains of the "Ages & Stages Questionnaires, Third Edition, 10 Month Questionnaire" and would benefit from enrichment and monitoring in these areas.

¶ 11 As to recommendations, it was undisputed H.N. should be made a ward of the

court, guardianship should be placed with DCFS, a permanency goal of "return home" within five months should be set, and custody should not be placed with Cynthia while she was completing services. The only issue in dispute was whether custody should be placed with respondent or DCFS. The caseworker who prepared the dispositional report, the State, Cynthia's counsel, and the guardian *ad litem* (GAL) asserted custody should be placed with DCFS on the grounds respondent was fit but unable to care for H.N. due to the absence of an existing relationship between the two. Respondent's counsel asserted custody should be placed with respondent as respondent had a stable home and a foster home could not provide H.N. with an existing relationship.

¶ 12 After considering the evidence and the recommendations, the trial court made H.N. a ward of the court, placed guardianship and custody with DCFS, and set a permanency goal to "return home" within five months. In the oral pronouncement of its decision, the court noted the following with respect to respondent:

> "[Respondent] has been determined to be the biological father, but has not been—at least in the instant stages of this case has not been a primary caretaker for [H.N.]. And while we remove children and place them with strangers all the time and ask them to raise children, [respondent] still has to be acquainted with [H.N.'s] needs—has to be involved in understanding what [H.N.'s] needs are as a child and we have to assess whether he can meet the needs of [H.N.]. Every child is unique unto himself or herself. So while he may raise other children, this is a different situation. [H.N.] is a

different child, and the [c]ourt is tasked with doing what I think is best for [H.N.]."

At a hearing later that month, the court clarified its disposition was based on a finding respondent was fit but unable to care for H.N. due to the "limited time" respondent had spent with H.N. The court's modified written dispositional order indicates its "unable" finding was based on respondent having "not established a relationship with [H.N.]."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues (1) his admission of neglect was not knowingly and intelligently made and (2) the trial court's finding he was unable to care for H.N. was against the manifest weight of the evidence and, therefore, the decision to place H.N. with a third party was an abuse of the court's discretion and contrary to the policy of the Act (705 ILCS 405/1-1 to 7-1 (West 2016)). The State disagrees.

¶ 16 A. The Act

¶ 17 The Act (705 ILCS 405/1-1 to 7-1 (West 2016)) provides a two-step process for determining whether a minor should be removed from a parent's custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step requires the trial court to conduct an adjudicatory hearing to determine whether a minor is abused, neglected, or dependent. *Id.* ¶ 19. If such a finding is made, the matter proceeds to the second step, which requires the court to conduct a dispositional hearing. *Id.* ¶ 21. "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).

¶ 18 B. Adjudicatory Order

¶ 19 Respondent requests we vacate the trial court's adjudicatory order and remand for a new adjudicatory hearing as his admission of neglect was not knowingly and intelligently made. Respondent did not make any such admission. Instead, Cynthia admitted to the allegations of the State's petition for wardship, which the court found to be sufficient to sustain a finding of neglect when coupled with the underlying factual basis. Cynthia's admission alone was sufficient to support a finding of neglect. See *In re A.P. & J.P.*, 2012 IL App (3d) 110191, ¶ 19, 965 N.E.2d 441 ("[T]he only question to be resolved at an adjudicatory hearing is whether the child is neglected and not whether the parent is neglectful.").

¶ 20 C. Dispositional Order

¶ 21 Respondent requests we vacate the trial court's dispositional order and order H.N. be immediately placed with him as the court's finding he was unable to care for H.N. was against the manifest weight of the evidence and, therefore, its decision to place H.N. with a third party was an abuse of discretion and contrary to the policy of the Act (705 ILCS 405/1-1 to 7-1 (West 2016)).

¶ 22 Placement with a third party is allowed only if a parent is found to be "unfit," "unable," or "unwilling" to care for the minor. 705 ILCS 405/2-27(1) (West 2016); *In re M.M.*, 2016 IL 119932, ¶ 31, 72 N.E.3d 260. Respondent suggests the absence of a relationship between a child and a parent cannot form the basis of a finding a parent is unable to care for that child without torturing the definition of "unable." The term "unable" is not defined by the

relevant section of the Act. See 705 ILCS 405/2-27(1) (West 2016). Under these circumstances, we must give the term its ordinary meaning, which can be found in a dictionary. *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 26, 77 N.E.3d 69. According to the dictionary cited by respondent, the term "unable" means "[l]acking the skill, means, or opportunity to do something." See Oxford Online Dictionary, https://en.oxforddictionaries.com/definition/us/unable, (last visited January 4, 2019).

¶ 23 The trial court found respondent was unable to care for H.N. due to the lack of a relationship between the two. Specifically, the court expressed concern with the absence of evidence showing respondent was acquainted with and able to meet H.N.'s unique needs. Knowledge of a child's needs is essential to parenting that child, and someone lacking such knowledge could reasonably be regarded as "unable" to care for the child. The record shows H.N. spent approximately the first seven months of her life with her mother. Respondent "saw [H.N.] only on a few occasions" during this time. H.N. then spent three months residing with a foster family. During that time, respondent had weekly visitation with H.N. Respondent's wife and his two sons had no contact with H.N. as of the date of the dispositional hearing. Given this evidence, we cannot say the trial court's finding respondent was unable to care for H.N. was against the manifest weight of the evidence. See *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004) ("A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident."). Respondent has failed to persuade the court's decision to place H.N. with a third party was an abuse of its discretion or contrary to the policy of the Act (705 ILCS 405/1-1 to 7-1 (West 2016)).

¶ 24 III. CONCLUSION

¶ 25 We affirm the trial court's judgment.

¶ 26 Affirmed.

¶ 27 JUSTICE CAVANAGH, specially concurring:

¶ 28 I disagree with the trial court's rationale for finding respondent to be unable to care for, protect, train, or discipline H.N. See 705 ILCS 405/2-27(1) (West 2016). The court reasons that because respondent has not been the primary caretaker of H.N., he is insufficiently acquainted with her needs. The court further reasons that even though respondent is raising his and his wife's child, it does not necessarily follow that he is able to raise H.N., since every child is unique. By that reasoning, however, H.N. could not be placed in the care of a foster parent, either—not even a foster parent who successfully had raised other children.

¶ 29 It might be argued that foster parents, unlike respondent, have been vetted by DCFS. True enough, but that argument would reverse the burden of proof. "During a dispositional hearing, the State must prove parental unfitness for dispositional purposes pursuant to section 2-27 *** by a preponderance of the evidence." *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. As the acknowledged biological father of H.N., respondent is not required to undergo vetting as a condition of having custody of her. He need not prove he is fit, able, and willing to take care of her. Rather, the burden is on the State to prove he is unfit, unable, or unwilling to do so. See *id.* The State did not carry that burden by proving simply that H.N.'s mother had been the primary caretaker.

¶ 30 Therefore, I have serious reservations about the trial court's rationale. See 705 ILCS 405/2-27(1) (West 2016) (requiring the court to provide a written factual basis for its finding). Even so, we may affirm a trial court's judgment on any basis that the record supports.

Elston v. Oglesby, 2014 IL App (4th) 130732, ¶ 12. I believe the finding of inability is reasonably defensible from the record. Arguably, respondent's marital or family circumstances make him unable to assume custody of H.N. A reasonable trier of fact could worry that because respondent and his wife share the same household, they inevitably would share the responsibility of taking care of H.N. and the resulting tension between respondent and his wife would prove unmanageable and ultimately detrimental to H.N.