

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).

2019 IL App (4th) 190031-U

NO. 4-19-0031

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 7, 2019
Carla Bender
4th District Appellate
Court, IL

In re Dak. M., Del. M., Des. M., Dar. M., and Das. D.,)	Appeal from the
Minors)	Circuit Court of
)	McLean County
(The People of the State of Illinois,)	No. 18JA86
Petitioner-Appellee,)	
v.)	Honorable
Detisha B.,)	J. Brian Goldrick,
Respondent-Appellant).)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s determination respondent-mother was dispositionally unfit was not against the manifest weight of the evidence.

¶ 2 In December 2018, the trial court entered a dispositional order, finding respondent-mother, Detisha B., was unfit for dispositional purposes, and it was not in her children’s best interests to be placed back in her custody. Detisha B. appeals, arguing the State presented insufficient evidence to support the court’s finding of unfitness. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 10, 2018, the State filed a petition for adjudication of wardship for Detisha B.’s children: Dak. M. (born February 8, 2017), Del. M. (born September 4, 2013), Des. M. (born May 2, 2012), Dar. M. (born May 28, 2009), and Das. D. (born June 8, 2006). The petition alleged the children were abused pursuant to section 2-3(2)(i) of the Juvenile Court Act

of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(i) (West 2016)) because either Darryal M., who was the respondent-father of all the children except Das. D., or someone Darryal M. or Detisha B. entrusted to care for Dar. M. abused the child. Dar. M. sustained bruising and marks to his arms and legs. The petition also alleged the children were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)) because they were living in an environment injurious to their welfare in the care of Detisha B. and Darryal M. because both parents had unresolved issues of domestic violence and anger management.

¶ 5 The alleged abuse came to the attention of the police on September 6, 2018, who responded to Dar. M.'s school because the child had marks on him "beyond parental discipline." Detisha B. was at the school and being very loud. A case worker from the Department of Children and Family Services (DCFS) told the police the school had contacted Darryal M. to pick up Dar. M. early on September 5, 2018, because of Dar. M.'s bad behavior. When Darryal M. came to the school, he grabbed Dar. M. by his left arm and pushed him into the corner of the building and held him in this position for several seconds as though he was verbally disciplining him. The incident was captured by the school's security camera. The next day, school administrators talked to Dar. M. about what happened the day before and observed several marks on Dar. M.'s arms and legs. The injuries suggested Dar. M. may have been physically abused at home. Dar. M. said the injuries were from his dad hitting him with an extension cord several weeks earlier. In addition, Dar. M. stated he was very afraid of his father. DCFS decided to take all of Detisha B.'s children into protective custody.

¶ 6 When questioned by the police, Darryal M. said he had recently been released from prison and had only lived at 1816 West Olive with Detisha B. and the children for a few weeks. He also admitted disciplining Dar. M. with a belt a few weeks earlier and pushing Dar.

M. into the corner of the grade school on September 5, 2018, to express his frustration at Dar. M. for getting into trouble at school, not to harm Dar. M. Even though Darryal M. told the police he hit Dar. M. with a belt, Detisha B. told the police the marks on Dar. M. were from fighting with his sisters and denied he had been hit with a belt. Detisha B. quickly became uncooperative with the police and stated she did not want to say anything more.

¶ 7 According to the shelter-care report filed on September 10, 2018, the four older children were interviewed at the Child Advocacy Center (CAC). Dar. M.'s statement at the school was consistent with his interview. He also stated his mother was present during the reported incident and pulled Darryal M. away from Dar. M. Dar. M. also stated Detisha B. acknowledged his injuries and told him to tell her if the pain was not gone the next day. Des. M. said Detisha B. and Darryal M. hit all the kids, except Dak. M., with a belt on their legs, arms, and stomachs. Del. M. said Detisha B. "taps us hard with a belt." According to Del. M., when the children were not in school, the children received "whoopins and whoopins and whoopins." Del. M. said she was happy she was not at her mom's home because of all the "whoopins."

¶ 8 On September 10, 2018, the trial court held a shelter-care hearing. Detisha B. and Darryal M. both appeared. Detisha B.'s attorney told the court Detisha B. and Darryal M. did not live together. However, we note Darryal M. told the police on September 6 that he had been living with Detisha B. and the children for about three weeks. Detisha B. stipulated to a finding of probable cause and an immediate and urgent necessity to remove the children from her custody. The court entered a temporary custody order, finding probable cause existed based on Dar. M.'s report on September 6, 2018, that Darryal M. struck Dar. M. with an extension cord causing injuries to Dar. M.'s arms and legs. The court found an immediate and urgent necessity existed to remove the children from Detisha B.'s home and reasonable efforts could not

eliminate the need to remove the children. The court noted Darryal M. and Detisha B. both had a history of domestic violence.

¶ 9 On October 30, 2018, the State filed its first supplemental petition for adjudication of wardship. The supplemental petition indicated the minors were abused pursuant to section 2-3(2)(v) of the Juvenile Court Act (705 ILCS 405/2-3(2)(v) (West 2016)) as a result of Darryal M. pushing Dar. M. into a brick wall at the school, which the minor said hurt his back. A DCFS investigator observed scratches on Dar. M.'s back.

¶ 10 On October 31, 2018, the trial court entered an adjudicatory order, finding the State proved by a preponderance of the evidence the children were abused as defined by section 2-3(v) of the Juvenile Court Act (705 ILCS 405/2-3(v) (West 2016)) because Darryal M. pushed Dar. M. into a brick wall on September 5, 2018, leaving scratch marks on Dar. M.'s back.

¶ 11 According to a dispositional report prepared by DCFS child welfare advanced specialist Kendra Helferich, which was filed with the trial court on December 5, 2018, Detisha B. continued to deny having any knowledge of Darryal M. harming Dar. M. During the investigation, Dar. M. said Detisha B. was present when Darryal M. physically abused him. According to the report, Detisha B. denied this and denied Darryal M. used excessive corporal punishment on or abused any of the children. She did admit Darryal M. spanked Dar. M. when he was younger but now used verbal reprimands. Detisha B. also denied spanking the children herself despite reports from Dar. M., Des. M., and Del. M. to the contrary. Detisha B. said during the investigation that Darryal M. was on parole and "didn't need this." Further, Detisha B. stated Dar. M. is not always truthful and accused his principal of kicking him.

¶ 12 The dispositional report listed the following objectives. Detisha B. would obtain and maintain stable mental and emotional health, engage in healthy relationships free from

domestic violence, only use appropriate forms of discipline with her children, and maintain a relationship with her children to continue her bond with them and demonstrate she can meet her children's needs. According to the report, Detisha B. loved her children and had a deep attachment to them. However, Detisha B. did not feel she needed any individual counseling. The report noted "[s]he really appears to have given some significant thought to discipline during the time that her children have been removed from her care." According to the report:

"DCFS believes that [Detisha B.] is capable to [*sic*] meeting minimum parenting standards with support and oversight. [Detisha B.] is more likely to develop and utilize the parenting skills that she needs if she can learn them while caring for the children. DCFS believes that DCFS can also provide more support in meeting the well-being needs of the children if they were returned to Bloomington."

The report indicated Darryal M. should not be allowed inside the family residence and only have supervised contact with the children until he completes an approved parenting class, resolves his criminal issues, and demonstrates he can apply appropriate methods of discipline.

¶ 13 According to the DCFS Integrated Assessment which was completed on November 9, 2018, approved the same day, and filed with the trial court on December 5, 2018, Detisha B. needed to substantially achieve certain recommendations prior to reunification/permanency goal achievement, including individual psychotherapy, family psychotherapy, and parenting education/training. She also needed to develop a protective plan and obtain mental health treatment records. The assessment indicated:

"The prognosis for reunification between [Detisha B.] and her children is GUARDED and CONCURRENT PLANNING is warranted and should begin

immediately. [Detisha B.'s] barriers to reunification are her history of domestic violence, untreated mental health symptoms/condition, and deficits in parenting knowledge/skills. However, if [Detisha B.] readily engages in the programs and services outlined above and demonstrates insight into her behavior and consistent motivation toward goals, her circumstances and/or ability to provide for the children's safety, permanency, and well-being may improve." (Emphasis in original.)

¶ 14 An addendum to the dispositional report was filed with the trial court on December 10, 2018. The addendum noted Detisha B. had attended an appointment for a mental health assessment at Chestnut Health Systems (Chestnut) on October 23, 2018. She then missed appointments scheduled on November 1 and November 15, 2018, but attended the second assessment appointment on November 28, 2018. The addendum also noted DCFS sent a referral on September 27, 2018, for Detisha B. to participate in a domestic violence assessment at Chestnut. As of November 9, 2018, a worker at Chestnut indicated the referral could not be found. Another referral was sent to Chestnut that day. Detisha B. had an appointment at Chestnut scheduled for December 10, 2018, for a domestic violence assessment. The report for Detisha B.'s mental health assessment had not been completed as of December 10, 2018. The addendum also indicated Darryal M. had been pulled over in Bloomington on November 29, 2018, driving Detisha B.'s vehicle and Detisha B. was in the vehicle.

¶ 15 In the summary to the addendum to the dispositional report, DCFS still recommended custody of all five children be restored to Detisha B. and an order of protective supervision be entered barring Darryal M. from entering or being in Detisha B.'s residence and from having unsupervised contact with the children. DCFS acknowledged the nature of Detisha

B. and Darryal M.'s relationship was unknown at the time the addendum was filed.

¶ 16 On December 12, 2018, the trial court held a dispositional hearing. The respective attorneys for Detisha B. and Darryal M. both indicated their clients were no longer in a romantic relationship. Charnette Griffin, the placement supervisor at DCFS for this case, testified she agreed with Kendra Helferich's reports and opinion as to how this case should be handled. Griffin testified she believed Detisha B. had eliminated all of the safety threats to her children. According to her testimony, Darryal M. had been away from Detisha B.'s home, and Detisha B. understood Darryal M. could not be in the home with the children. Griffin indicated she had not spoken directly with either the children or Detisha B., but Kendra Helferich told her Detisha B. was committed to completing mental health and domestic violence counseling at Chestnut. Griffin testified she believed it was in the children's best interests to be returned home to their mother.

¶ 17 While being questioned by the children's guardian *ad litem* (GAL), Griffin acknowledged several points. At the time of the shelter-care report, Dar. M. had injuries which he had suffered from Darryal M. and two of the other children had injuries that were not fully explained. Detisha B. had chosen not to believe Dar. M.'s statement Darryal M. had caused his injuries. Finally, the question whether Detisha B. was not protecting her children needed to be resolved before the children were returned to her.

¶ 18 While being questioned by the State, Griffin stated that to the best of her knowledge Detisha B. did not have an order of protection or no-contact order against Darryal M. She also testified Detisha B. had not yet begun any services, and DCFS did not know what services Detisha B. would be required to complete because the reports on Detisha B.'s domestic violence and mental health evaluations had not been completed. However, Griffin testified she

believed Detisha B. was committed to completing any services recommended by the domestic violence and mental health assessments.

¶ 19 The State asked the trial court to find Detisha B. unfit, place guardianship of the children with DCFS, and set a goal of return home within 12 months. The GAL also argued Detisha B. should be found unfit. According to the GAL, “It’s not the attitude that we measure safety by, but the completion of services, and attitude is not a substitution for completion or we’d return a large number of children at disposition. So it’s a little bit surprising to me without knowing what recommendations are on two pretty significant services we’re getting a recommendation of fitness today.”

¶ 20 After hearing arguments from the parties, the trial court stated:

“I cannot overlook that this is an excessive corporal punishment abuse issue, that services have started, but we don’t have the assessments complete with their results, and because of that, the Court cannot agree with the recommendations of the Agency here today and of counsel. The Court believes that it’s appropriate that the minors be made wards of the court, the Court believes it’s in their best interests.”

The court appointed DCFS as the children’s guardian and found Detisha B. and Darryal M. unfit.

¶ 21 The trial court entered a written dispositional order, finding Detisha B. was unfit to care for, protect, train, educate, supervise or discipline the children and placement of the children with her would be contrary to the health, safety and best interest of the children because Detisha B. needed to fully cooperate with the service plan goals, including mental health and domestic violence treatment. The court also found (1) reasonable efforts and appropriate services aimed at family reunification could not prevent or eliminate the need to remove the

minors from the home and (2) returning the children to Detisha B.'s home would be contrary to the health, welfare, and safety of the children.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Detisha B. argues the State did not present sufficient evidence to support the trial court's finding she was dispositionally unfit. After determining a child is abused, neglected, or dependent, a trial court must hold a dispositional hearing to determine whether it is consistent with the health, safety, and best interests of the minor children and the public for the minor children to be made wards of the court. *In re A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336. "The court also determines whether the minor's parent is fit to care for him [citation] and whether custody of the abused or neglected minor should be restored to the parent [citation]." *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001).

¶ 25 The State must prove by a preponderance of the evidence that a parent is dispositionally unfit "for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] 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); *In re Lakita B.*, 297 Ill. App. 3d 985, 993, 697 N.E.2d 830, 836 (1998). We will only disturb the trial court's finding of dispositional unfitness if the court's finding is against the manifest weight of the evidence. *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991). A finding is against the manifest weight of the evidence only if the record clearly demonstrates the opposite result was the proper result. *T.B.*, 215 Ill. App. 3d at 1062. Regardless of Helferich and Griffin's recommendation to return the children to Detisha B.'s custody, the trial court's finding of dispositional unfitness was not

against the manifest weight of the evidence in this case.

¶ 26 The recommendation to return the children home was inconsistent with the recommendation in the DCFS integrated assessment that the prognosis for reunification was “guarded” with barriers to reunification such as Detisha B.’s history of domestic violence, untreated mental health symptoms/conditions, and deficits in parenting knowledge and skills. When the dispositional hearing was held, DCFS had not even received the results of Detisha B.’s domestic violence assessment or mental health evaluation. As a result, DCFS had no way of knowing what services would be recommended for her.

¶ 27 It is difficult to see how DCFS could conclude Detisha B. was committed to complete any recommended services without knowing what those recommended services would be. This is especially true considering the dispositional report noted Detisha B. did not believe she needed any individual counseling, and she had already missed appointments at Chestnut.

¶ 28 Further, Detisha B. continued to deny she knew Darryal M. harmed Dar. M. and spanked the children herself, even though three of the children told investigators she did spank them. It is also clear Detisha B. was still having contact with Darryal M. because they were pulled over together by the police, which made it questionable whether Detisha B. would keep Darryal M. away from the children if the children were returned to her custody.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court’s determination Detisha B. was unfit for dispositional purposes.

¶ 31 Affirmed.