

2014 IL App (2d) 140386-U  
No. 2-14-0386  
Order filed September 15, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re A.H., Z.Y., K.N., T.N., and M.N., Minors	)	Appeal from the Circuit Court of De Kalb County.
	)	
	)	Nos. 13-JA-40
	)	13-JA-41
	)	13-JA-42
	)	13-JA-43
	)	13-JA-44
	)	
(The People of the State of Illinois, Petitioner- Appellee, v. Stacey H., Respondent- Appellant).	)	Honorable Ronald G. Matekaitis, Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's finding that respondent was unfit and unable to care for her five children was not against the manifest weight of the evidence, and the trial court did not abuse its discretion by giving custody and guardianship of the youngest three children to DCFS rather than their parental grandparents. Therefore, we affirmed.

¶ 2 Respondent, Stacey H., appeals from the trial court's dispositional order finding her unfit to care for her five minor children, A.H. (born February 8, 2000), Z.Y. (born September 26, 1998), K.N. (born October 18, 2012), T.N. (born September 28, 2010), and M.N. (born June 9,

2006). She argues that: (1) the trial court's finding of unfitness was against the manifest weight of the evidence because most of the documents on which the State relied are not part of the record, and, alternatively, that (2) the trial court abused its discretion by giving custody and guardianship to the Department of Children and Family Services (DCFS), rather than to family members, resulting in the three youngest children being placed in foster care with strangers. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 The State initially filed petitions on September 24, 2013, alleging that the minors were neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The State alleged that the children were under 18 years of age and their environment was injurious to their welfare, in that: (1) Jerome N., the father of the youngest three children, battered A.H.; (2) Jerome and respondent engaged in domestic violence in front of the children; (3) respondent violated the DCFS safety plan by having unsupervised contact with A.H.; and (4) Jerome and respondent were charged with harassment of and communication with a witness, also A.H.

¶ 5 On February 28, 2014, respondent and Jerome stipulated that the minors were neglected under the second allegation, in that their environment was injurious to their welfare because respondent and Jerome had engaged in domestic violence in front of them. The trial court accordingly adjudicated the children neglected and set the matter for a dispositional hearing.

¶ 6 The dispositional hearing took place one month later on March 28, 2014. The trial court stated that it was in receipt of the DCFS dispositional report and service plans, and the State asked that the trial court rely on them, in addition to witness testimony.

¶ 7 Rachel Williams, the DCFS caseworker for the minors, testified as follows. Respondent

opened a Facebook account a few months prior. Respondent said she was using the name Stacey E.<sup>1</sup> Williams had discussed with respondent the importance of keeping the settings private to ensure the children's safety, so that Jerome and others would not have access to information about the children's whereabouts and what was happening in their lives. However, respondent kept the account public, and Williams had visited her page. The profile picture was of K.N., whom Williams recognized. There were also pictures of T.N. and respondent's tattoo, which Williams recognized.

¶ 8 Williams made screenshots of posts from the page, and she showed them to respondent prior to the hearing. Respondent seemed upset that Williams had reviewed the posts. Williams identified "screenshots" from the Facebook page in court. Respondent's status indicated that she was in a relationship, which concerned DCFS because respondent had not notified DCFS so that it could do a background check. Further, Williams had previously told respondent that if she was in a relationship, meetings should take place while the kids were in daycare or at school, and the children should not be exposed to any paramours. However, one of the posts stated that respondent had moved Carl T. into her house and had him around her children. Respondent also indicated in a post that she knew that Carl had been in prison. When Williams asked respondent earlier that week if she knew why Carl had been in prison, she said that she did not know. Williams agreed that a lot of the posts were in the context of a breakup, and that one of the posts specifically referred to Carl as respondent's ex.

¶ 9 During one of the home visits to respondent's residence, Williams saw a pool cue that

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<sup>1</sup> Williams mentioned a full last name during the hearing, but we use only the initial here in case the name is still publicly associated with respondent.

Z.Y. said belonged to Carl. She also saw a black leather jacket.<sup>2</sup> A Facebook post from respondent stated that Carl needed to get his stuff out of the house in two days. Respondent told Williams that Carl's things were there but that he was not living there.

¶ 10 When respondent started her Facebook account, Williams knew respondent had contacted Neiland H.<sup>3</sup> Williams told respondent that he should not be around the kids, and respondent said that she understood. Respondent did not tell Williams about Carl.

¶ 11 Respondent testified by reading a letter to the court, stating as follows, in relevant part. The "two men named in [William's] report" were "childhood friends that turned out to be unhealthy relationships. They are out of the picture and all relationships have been severed." Her children were the most important part of her life, and she promised not to have men around them in the future until they were "healthy" and could "cope with everyday situations." She was also trying to keep herself safe, and she knew it was a concern of court orders and DCFS that she would go back into abusive relationships that "got [them] to this point." However, she had no intention of going "backwards" and needed her children before she needed a man in her life. She asked that the court allow her to keep the children. She asked that, otherwise, Z.Y. go to his father, A.H. stay with respondent's mother, and the three youngest children be placed with Debra Suter, who was licensed by DCFS for daycare, with whom the children were familiar, and who had "room and would love them as her own." Respondent asked that her children remain with her, and if not, with someone they were familiar with.

¶ 12 In closing argument, Assistant State's Attorney (ASA) Rachel McIntyre referenced the

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<sup>2</sup> Jerome, who was present at the hearing, identified the jacket as belonging to him.

<sup>3</sup> This individual's name is spelled "Neiland" in the dispositional report and "Niland" in the report of proceedings.

dispositional report extensively, stating as follows. DCFS first had involvement with the family in 2006, when there was an indicated report that Z.Y. and A.H. had welts on their body. Services were offered from 2006 to 2007. In February 2013, there was another indicated report for risk of physical injury/injurious environment because respondent fled the home after Jerome severely battered her in the children's presence. There had been domestic violence in the home for eight years prior to that. Later in 2013, there was a domestic incident in which Jerome battered respondent and A.H., after which respondent threatened to kill herself. In September 2013, respondent was arrested for communicating with and attempting to detain a witness. This occurred because respondent and Jerome had agreed to have respondent contact A.H. to get her to retract her statement about Jerome abusing her; respondent's contact with A.H. was a violation of the DCFS safety plan. In December 2013, a DCFS intern went to the home and found a male there, despite the fact that a caseworker had talked to respondent about not having males present in the home because it was confusing and anxiety-provoking to the minors. Thus, notwithstanding respondent's current statement that she would not have any men around, she had already been told not to have males in the home.

¶ 13 In January 2014, the caseworker spoke to respondent, who said that she had gone with the children to a get-together with Jerome's family. While there, Jerome "was placed on the phone by his mother" and tried to speak with respondent. The same month, M.N. said that Carl and Neiland, who he referred to as the "other dads," had been around the house and spent the night. M.N. said that Neiland was mean and would yell at them. Later that month, M.N. said that even though the caseworker had said that he and Z.Y. were supposed to be the only boys in the house, respondent had told M.N. not to talk with the caseworker about Neiland anymore.

¶ 14 In March 2014, M.N. told the caseworker that respondent said that she could be put in jail

if he told the caseworker about Carl and Neiland. Z.Y. said that respondent was dating both men. ASA McIntyre argued that the minors were repeatedly exposed to not only having men in the house, but also having respondent telling them to lie about the men and threatening that she would go to jail if they did not.

¶ 15 Regarding mental health treatment, in February 2014 respondent's progress was rated as "limited" because she missed two appointments, and she did not let DCFS know of any barriers to attending the appointments.

¶ 16 ASA McIntyre continued that on the subject of parenting, respondent had in the past relied on Z.Y. and A.H. to provide care for the younger children. The caseworker spoke to respondent about this, and DCFS provided protective daycare for the younger children. The report stated that Z.Y. often took the role of the parent towards the younger children, and he had yelled at them and put his hands on them in the caseworker's presence. Z.Y. was also found to have BB guns in his room accessible to the other children, and he was known to have a drug problem. Even after respondent was told that Z.Y. could not babysit his siblings, on March 9, 2014, there was a hotline report that he was babysitting his three younger siblings and was outside throwing water balloons. One balloon hit an unmarked squad car, and when police came to the home, the front door was open, Z.Y. was not present, there was a pan on the stove with food in it, the oven was on, and the youngest three children were asleep.

¶ 17 ASA McIntyre argued that respondent had continued to: have other men in the home and not put the children first; allow Z.Y. to babysit; and put the children at extreme risk. She argued:

"There's been intensive services offered with minimal progress here, she's failed to demonstrate protective factors, and she's failed to be honest with DCFS, she's failed to

protect these minors. We ask that you find her unfit and unable at this time, as well at the fathers.”

¶ 18 Respondent’s attorney argued as follows. As it related to the allegations of communicating with or detaining a witness, respondent was presumed innocent because she had not actually been convicted of those charges. The current hearing was taking place because of some allegations that respondent was in relationships with others, but the only evidence offered was hearsay made by the children to Williams and “ramblings of some Facebook post[.]” However there was no proof that either man ever lived with respondent or in fact had a relationship with her. Respondent said that they were friends, and there was nothing inappropriate about having friends at the house. “If the evidence showed something that a little bit more substantial than a friendship, well then of course she would have to disclose that to DCFS[.]” but there was no evidence of such relationships. Z.Y. throwing water balloons might rise to the level of stupidity, but not being out of control. He was almost 16 years old, so there was nothing wrong with having him care for his younger three siblings. Further, the case began because of domestic violence between Jerome and respondent, but Jerome was in custody, and respondent had an order of protection against him. Therefore, the circumstances giving rise to the neglect allegations had been rectified. It was not appropriate for the children to be removed from respondent’s care and custody, nor was it in their best interests.

¶ 19 ASA McIntyre responded that as far as leaving Z.Y. with the minors, DCFS had said that he was not an appropriate caregiver and had offered her services for alternative childcare. ASA McIntyre argued that Z.Y.’s actions of leaving the children alone, sleeping, with food on the stove and in the oven at midnight demonstrated that he should not have been babysitting. She further argued that Jerome being in jail did not alleviate the issues, as respondent’s choice of

men was a problem, her choice of putting the men before her children was a problem, and her not been fully committed to the services offered was a problem.

¶ 20 The trial court stated that it had reviewed the dispositional report, the service plan, and integrated assessment. It also took into consideration the exhibit of Facebook postings, the witness testimony, and counsels' arguments. It was the court's opinion that the situation had "deteriorated" from when the children were placed in care, and it found respondent unfit and unable. The trial court's written order stated that respondent had not cooperated with DCFS and had continued to place the children at risk by having men in the home and leaving the children at home alone against DCFS recommendations. The trial court made the children wards of the court and gave their custody and guardianship to DCFS, with the discretion to place the children. Respondent timely appealed.

¶ 21

## II. ANALYSIS

¶ 22 If the trial court determines that that a minor is neglected (to which respondent stipulated here), the trial court must then proceed to the second adjudicatory stage in which it determines whether the minor should be made a ward of the court. 705 ILCS 405/2-21(2) (West 2012)); see *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004). To assist the court in making this determination, it may order that a dispositional report be prepared. 705 ILCS 405/2-21(2) (West 2012). The trial court must determine whether the child's parents "are unfit or are unable, 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 in the minor remains in the custody of his parents \*\*\*." 705 ILCS 405/2-27(1) (West 2012); see *In re A.P.*, 2013 IL App (3d) 120672, ¶ 15. The State has the burden of proving parental unfitness for dispositional purposes by a preponderance of the evidence. *In re A.P.*, 2013 IL App

(3d) 120672, ¶ 15. A trial court's dispositional fitness determination will not be disturbed unless it is against the manifest weight of the evidence, meaning that a review of the record clearly shows that the trial court should have reached the opposite result. *Id.* ¶ 17.

¶ 23 Respondent first argues that although the trial court relied heavily upon DCFS's "purported" dispositional report, a review of the record indicates that no such report was entered into evidence. Respondent argues that, instead, only an integrated assessment that DCFS performed regarding the children's three biological fathers was entered into evidence.

¶ 24 Respondent argues that it is also "troubling" that although the trial court's order contains a finding that she had not cooperated with DCFS because she continued to place the children at risk by having men in the home and leaving the children alone against DCFS recommendations, the record contains no DCFS service plan, recitation of what services were to be complied with by respondent, or any testimony at the hearing that respondent was not cooperating with any DCFS service plan. Respondent argues that the only competent reference in the record to her progress in completing services is a finding in a January 17, 2014, status order, which stated that she was "doing services" and that the children were "doing well." Respondent maintains that the lack of evidence of her failure to cooperate with DCFS services is juxtaposed against her uncontroverted testimony at the hearing that "she is complying with and will comply with all court and DCFS orders."

¶ 25 Respondent's argument, which hinges on the lack of exhibits in the record, is without merit. Section 2-21(2) of the Juvenile Court Act allows the trial court to order that a dispositional report be prepared and to use the report in making its determinations at the dispositional hearing. Here, the report of proceedings shows that the State asked that it be able to rely on the dispositional report, and the trial court stated that it was in receipt of a copy of the

dispositional report and service plans. The State asked if it should admit them as an exhibit, and the trial court indicated that they were already part of the record. In the State's closing argument, it discussed in detail information from the dispositional report. The trial court overruled Jerome's objections, based on hearsay, to the State's reliance on information from the report; the parties did object to the documents allegedly not being part of the record. In rebuttal argument, the State stated that "the report was admitted into evidence." In making its ruling, the trial court stated that it was "in receipt of the dispositional report provided by DCFS" and had reviewed that as well as the service plan and integrated assessment.

¶ 26 Accordingly, the record indicates that the dispositional report and service plan were considered to be part of the record by the trial court and the parties involved. While the documents may have been omitted in the preparation of the common law record, that does not equate to them never having been considered part of the record in the first place. Finally, although it is the appellant's burden to provide a sufficiently complete record to allow for review (see *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant has the burden to provide a sufficiently complete record of trial proceedings to support his claims of error, and the reviewing court will resolve any doubts that arise from the incompleteness of the record against him)), the State filed a motion to supplement the record with the dispositional report and service plan. The motion included a copy of the trial court's subsequent July 18, 2014, ruling, made by the same trial judge, stating that the dispositional report and service plan are "to be placed in the court file and admitted into evidence." Respondent did not object to the State's motion to supplement the appellate record, and we granted it. Therefore, the "missing" reports were properly considered at the dispositional hearing and are currently contained within the record.

¶ 27 Moreover, although respondent relies on the January 17, 2014, order stating that that she was “doing services” and that the children were “doing well,” that order was a simple status order that was entered before the children were stipulated to be neglected in February 2014. The January 2014 order did take into consideration the evidence submitted at the March 2014 hearing. Also, at the adjudicatory hearing, respondent did not in fact testify that she was complying with all DCFS and court orders, but rather promised to do so in the future. Williams’s testimony and the dispositional reports showed respondent’s substantial noncompliance with the DCFS service plan, including by having men in the house with the children and leaving Z.Y. in charge of the youngest three children.

¶ 28 Respondent argues that while Williams testified at the hearing about seeing a pool cue and a man’s jacket at the home, there was no evidence establishing that either of the men referenced at the hearing were ever living with respondent or having contact with the children, or that their alleged presence had any negative effects on the children. Respondent points to Williams’s testimony that respondent told her that the men were not, in fact, living in her home. Respondent argues that based on Jerome’s statement that the black leather jacket belonged to him, and respondent’s demand in a Facebook post that Carl retrieve his pool cue, the only legitimate inference is that the men were not living with her.

¶ 29 We note that in the Facebook posts identified by Williams as being respondent’s, respondent referred to having moved Carl into her house, around her kids. Even if neither Carl nor Neiland was actually living with respondent, there was significant evidence that respondent had a relationship with them and had them around the children. According to the dispositional report, in December 2013 a DCFS worker went to respondent’s home and found a man there. When Williams asked respondent about this, she said that she had reconnected with Neiland, an

old friend. Williams told respondent not to have any men in the home because it was confusing and anxiety-provoking to the children, in that they had witnessed Jerome engage in domestic violence against respondent in the home, often related to allegations of her being with other men. On January 13, 2014, M.N. referred to Carl and Neiland as “ ‘the other dads’ ” and was worried about what Jerome would do. He said that they spent the night, at different times, and that Neiland was mean. The next day, respondent changed her Facebook status to “ ‘In a Relationship.’ ” On January 29 of the same month, M.N. said that respondent told him not to talk about Neiland with Williams anymore, saying that she could otherwise be put in jail. Z.Y. said that respondent was dating both men, that Neiland was “ ‘an alcoholic and pothead,’ ” and that Carl would fight with respondent frequently in front of the children. Williams told respondent that background checks needed to be completed on people who had frequent contact with the home, but respondent never reported relationships with Carl and Neiland. Williams testified at the dispositional hearing that respondent later acknowledged knowing that Carl had been in jail, but respondent did not know why. Facebook posts from respondent reference having been in love with Carl and breaking up with him. Respondent testified, through her statement, that Carl and Neiland were childhood friends who “turned out to be unhealthy relationships,” thereby indicating that she had been in relationships with them. Accordingly, there was evidence that respondent had been dating both Carl and Neiland, allowed them to be around the children even though she had been told she was not supposed to, that their presence caused anxiety in at least some of the children, and that respondent asked the kids to lie to DCFS about the men. Again, the trial court’s order referenced not only respondent’s having Carl and Neiland in her home in its ruling, but also the fact that she left the children alone against DCFS recommendations. Respondent’s arguments do not provide a basis for concluding that the trial

court's finding, that she was unfit and unable to care for the children, was against the manifest weight of the evidence.

¶ 30 Next, respondent argues that the trial court erred in entering an appropriate dispositional order. Once a minor is neglected and found to be a ward of the court, the court may: (1) order that the child continue in the care of the parents, guardian, or legal custodian; (2) restore custody to these individuals; (3) order that the child be partially or fully emancipated; (3) or place the child in accordance with section 2-27 of the Juvenile Court Act (705 ILCS 405/2-27(1) (West 2012)). 705 ILCS 405/2-23(1) (West 2012). Under section 2-27, the trial court may give custody of the child to a suitable relative or DCFS, among others. 705 ILCS 405/2-27(1) (West 2012). In making this determination, the trial court should consider whether, based on the minor's health, safety, and best interest, appropriate services aimed at family preservation and reunification have been unsuccessful in rectifying the conditions leading to a finding of unfitness and inability, and whether no family preservation or reunifications services would be appropriate. 705 ILCS 405/2-27(1.5) (West 2012). We will not reverse the trial court's selection of a disposition unless the trial court abused its discretion. *Id.* ¶ 21.

¶ 31 Respondent notes that she made placement requests at the hearing. She argues that instead of granting her request that the children be placed with family members, which would have served the considerations the trial court is required to make under the statute as well as the public policy interests of family preservation and reunification, the trial court placed the children's guardianship with DCFS subject to its discretion to further place the children. According to respondent, this resulted in the three youngest children being placed in foster care outside the area with strangers, "notwithstanding the fact that the children's paternal grandparents were available, able, and willing to care for them." Respondent argues that there

was no evidence presented that placement with family members would have been inappropriate or not in their best interests.

¶ 32 As the State points out, respondent did not ask that the trial court place the youngest children with their paternal grandparents (Jerome's parents) but rather asked that they be placed with "Debra Suter." The record indicates the youngest three children's paternal grandmother is named Renata P., not Debra, and it is not clear from the record who Debra is and if she is even a relative. There was no evidence presented at the hearing that the paternal grandparents were actually willing and able to care for the children. Even if they were, the record indicates that they would not be an appropriate placement. Jerome was arrested for domestic battery to A.H. and was also reported to have abused respondent for years. In December 2013, respondent told a CASA caseworker that she feared retaliation from Jerome's family if she testified against him at Jerome's criminal trial. She later told a CASA caseworker that she was worried that Jerome would come after the family if he got out of prison. In January, Renata received a call from Jerome while respondent and the children were over, and she let the minors talk to Jerome, despite a court order prohibiting contact. Thus, given respondent's fear of Jerome, her fear of retaliation by his family, and Renata's facilitating improper communication between Jerome and the children, it cannot be said that the trial court abused its discretion by failing to place the youngest three children with Jerome's parents.

¶ 33

### III. CONCLUSION

¶ 34 For the reasons stated, we affirm the judgment of the De Kalb County circuit court.

¶ 35 Affirmed.