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2014 IL App (3d) 130371-U

Order filed March 11, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> D.W., L.W., and T.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-13-0371, 3-13-0372, and
	)	3-13-0373
Petitioner-Appellee,	)	Circuit Nos. 12-JA-293, 12-JA-294, and
	)	12-JA-295
v.)	
)	
Erica W.,	)	Honorable
	)	Mark E. Gilles,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court erroneously considered testimonial evidence of L.W.'s attendance record; however, this error does not require reversal of the neglect finding. (2) The trial court's unfitness finding was not against the manifest weight of the evidence.

¶ 2 The respondent, Erica W., appeals the trial court's neglect adjudication and unfitness disposition. On appeal, the respondent argues that: (1) the trial court erred in admitting testimonial evidence of the contents of L.W.'s school attendance record during the neglect

proceedings; and (2) the court's unfitness determination was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4 On November 20, 2012, the State filed three identical petitions alleging that D.W., L.W., and T.P. were neglected. The petitions alleged that the Department of Children and Family Services (DCFS) became involved with the family on October 30, 2012, due to a report that the respondent was out late at night using alcohol and drugs, the respondent kept T.P. out late at night, the respondent's home had no water or electricity, and L.W. had been tardy 21 times since the start of the school year. The petition further alleged that on November 5, 2012, the respondent filled her car with gasoline which she did not pay for. The respondent's sister confronted her about the purported theft, and the respondent drove off recklessly until she was stopped by the police. The petition further alleged that on November 13, 2012, the respondent had submitted a late drug drop. The petition also contained allegations that the respondent refused to work on service plans as an intact family, D.W. battered the respondent because he did not want to give her his money, and the respondent had a criminal history.

¶ 5 On December 12, 2012, respondent filed an answer to the petition. In the answer, the respondent stipulated that the State would call witnesses at an adjudication hearing to support the allegations that (1) D.W. battered her, and (2) she had a criminal history which included a 2009 charge for possession of a stolen vehicle and a 2010 charge for obstructing identification.

¶ 6 On April 17, 2013, the matter proceeded to a neglect adjudication. Mike Bergstrom testified that he received a DCFS hotline report that the respondent took T.P. out late at night in an environment where drugs and alcohol were present, L.W. was having problems in school and had been tardy several times, and the respondent lived in a house without water or electricity. Bergstrom received a second report that the respondent drove off without paying for gasoline and

thereafter was arrested for reckless driving while T.P. was in the backseat. In a DCFS interview, the respondent denied the incident.

¶ 7 On November 9, 2013, Bergstrom instructed the respondent to complete a drug drop. However, the respondent did not complete the drop until five or six days later. The respondent also refused to cooperate with an intact service plan because she did not want DCFS involved in her life.

¶ 8 Peoria police officer James Chiola testified that on November 5, 2012, around 11:50 a.m., he received a report of two subjects, in separate vehicles, fighting. At the intersection of Adams Street and McArthur Highway, Chiola saw a gold Dodge Intrepid weaving in and out of traffic at a high rate of speed. A blue vehicle pursued the Intrepid and, eventually, the driver of the blue vehicle pulled over and waved Chiola in the direction of the Intrepid. Chiola stopped the Intrepid, identified the respondent as the driver, and noticed that T.P. was strapped in a car seat. Chiola cited the respondent for reckless driving, driving with a suspended driver's license, and driving while uninsured.

¶ 9 Magnolia Branscumb testified that she was the principal at Glen Oak Community Learning Center. Branscumb was informed by her secretary that L.W. had been tardy an excessive number of times since the school year began on August 20, 2012. Branscumb learned, after checking the school's attendance program, that L.W. had been tardy 25 times between August 20 and November 7, 2012. Defense counsel objected to this testimony, but the trial court allowed it over the objection.

¶ 10 The respondent testified that she met with Bergstrom on November 16, 2012. At the start of the meeting, she agreed to engage in a service plan; however, by the end of the meeting, DCFS had decided to take temporary custody of the minors. The respondent also stated that she was not able to complete the drug drop on November 9, 2012, because she did not have

transportation to the testing location. Additionally, the respondent was not sure if the testing facility was open during the weekend of November 10 and 11, 2012, and Monday, November 12, 2012, was Veteran's Day. The respondent completed the drop on the next day that she knew the testing facility was open.

¶ 11 The State introduced the respondent's conviction for driving while license was suspended that resulted from the November 5, 2012, incident. The parties stipulated that a police officer would testify that on November 4, 2012, he observed D.W. strike the respondent. A second officer would testify that the respondent reported that D.W. battered her because he did not want to give the respondent money that he had received from his father.

¶ 12 The trial court found that the following allegations in the petition were proven: that respondent had kept T.P. out late at night while she used alcohol and drugs; that L.W. had repeatedly been tardy to school; that the respondent had driven recklessly while T.P. was in the backseat; that the respondent had failed to cooperate on intact family service plans; that the respondent had submitted a late drug drop; that D.W. had battered the respondent because he did not want to give respondent his money; and that the respondent had a criminal history. The trial court found the minors to be neglected and scheduled the matter for a dispositional hearing.

¶ 13 Prior to the dispositional hearing, a DCFS dispositional hearing court report/social history was filed. The report documented that DCFS caseworker Taniqua Phipps asked the respondent to complete a substance abuse assessment after testing positive for marijuana in December 2012. The respondent refused to complete the assessment until April 2013. The integrated assessment/social history report also documented that respondent had a criminal history that included arrests in 2009 for criminal trespass to a vehicle and theft. The report also stated that, according to the respondent, the reasons for DCFS' involvement in the case were "a bunch of baloney with no merit or truth." The respondent acknowledged no wrongdoing and stated that

her children were likely negatively impacted by their separation. The respondent further stated that she was committed to reunification with her children and was willing to comply with the recommended services. However, when individual psychotherapy was discussed, the respondent became defensive.

¶ 14 At the dispositional hearing, Phipps testified that the respondent had consistently completed her drug drops and all of the respondent's drops since January 2013 were negative. However, one of the respondent's drops at the end of December 2012 tested positive for marijuana. The respondent had also faithfully attended counseling, acted appropriately with her children during visits, and completed a drug and alcohol screening. However, the respondent refused to complete a drug and alcohol assessment for three months.

¶ 15 The trial court found that it was in the best interests of the minors to be made wards of the court and the respondent be found unfit. As the basis for its ruling, the court cited the "petition, reckless driving with minor, drop positive for marijuana, not cooperating with DCFS." The respondent appealed.

¶ 16 ANALYSIS

¶ 17 I. Neglect Adjudication

¶ 18 The respondent argues that the trial court committed reversible error in admitting testimonial evidence of L.W.'s school attendance records. The State agrees that the trial court erred, but contends that the overall neglect finding was not against the manifest weight of the evidence. We review the trial court's evidentiary ruling for an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52 (2001). We will not reverse the trial court's ultimate neglect adjudication unless it was against the manifest weight of the evidence. *In re Malik B.-N.*, 2012 IL App (1st) 121706. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re A.P.*, 2012 IL 113875, ¶ 17.

¶ 19 We agree that the trial court erroneously considered testimonial evidence of L.W.'s school attendance record. This evidence was hearsay and did not fit within an exception that would allow the court to consider it. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). As Branscumb's attendance testimony was the only evidence supporting the neglect petition's allegation of L.W.'s tardy notices, we vacate this finding.

¶ 20 We find that the remaining evidence supported the court's findings of the other neglect allegations in the petition. In particular, Bergstrom testified that the respondent was unwilling to cooperate with DCFS to establish an intact service plan, and the respondent failed to immediately complete a required drug drop in November 2012. Chiola testified that he cited the respondent for reckless driving while T.P. was in the vehicle, and the respondent stipulated that she was battered by D.W. and that she had a criminal history. Therefore, the remaining neglect allegations were proven, and we find that they were sufficient to support the trial court's overall neglect adjudication.

¶ 21 **II. Unfitness Disposition**

¶ 22 The respondent argues that the trial court's unfitness adjudication was against the manifest weight of the evidence. The respondent contends that because she was compliant with the tasks imposed by DCFS and had not had a positive drug drop in five months, the trial court did not have a basis for its unfitness finding.

¶ 23 Section 2-27 of the Juvenile Court Act of 1987 permits a trial court to commit a minor to DCFS wardship if the court determines that the 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 if the minor remains in the custody of his or her parents.” 705 ILCS 405/2-27(1) (West 2012). A

trial court's unfitness determination is accorded great deference and will not be reversed unless it was against the manifest weight of the evidence. *Malik B.-N.*, 2012 IL App (1st) 121706.

¶ 24 Here, the reports and testimony offered at the dispositional hearing indicated that the respondent had made progress toward remediating the conditions that led to the neglect adjudications, but she had not cooperated fully with DCFS. In particular, the respondent had a positive drug drop in December 2012 after the neglect petition had been filed. In spite of this drop, the respondent refused to complete a drug and alcohol assessment for several months. Further, the respondent's statements in the integrated assessment/social history report indicated that she does not accept full responsibility for the allegations in the neglect petition and she has been reluctant to engage in psychotherapy. Consequently, we cannot say that the trial court's unfitness adjudication was contrary to the manifest weight of the evidence.

¶ 25

CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 27 Affirmed.