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2014 IL App (3d) 130410-U

Order filed April 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

<i>In re</i> R.T.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit
a Minor	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-13-0410
Petitioner-Appellee,	)	3-13-0411
	)	3-13-0412
v.	)	Circuit Nos. 12-JA-192
	)	12-JA-195
Robert L.,	)	12-JA-196
)	
Respondent-Appellant).	)	Honorable
	)	Mark E. Gilles
	)	Judge, Presiding.
)	
<i>In re</i> J.T.,)	
)	
a Minor)	
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	
)	
v.)	
)	
John T.,)	
)	
Respondent-Appellant).)	
)	
)	
<i>In re</i> M.T.)	
)	

a Minor,)
)
(The People of the State of Illinois,)
)
Petitioner-Appellee)
)
v.)
)
John T.,)
)
Respondent-Appellant).)

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s findings that minors were neglected based on an injurious environment and respondent fathers were unfit based on criminality and ongoing cannabis use were not against the manifest weight of the evidence. The trial court’s adjudication of wardship was not an abuse of discretion and it did not err in denying incarcerated father’s request for visitation.

¶ 2 The State filed a juvenile petition alleging that siblings R.T., J.T. and M.T. were neglected based on an injurious environment. Following a finding of neglect, the trial court found respondent fathers, Robert T. and John T., dispositionally unfit, adjudged the children wards of the court, and denied Robert’s request for visitation with R.T. and John’s request for custody of J.T. and M.T. Both Robert T. and John T. appeal. We affirm.

¶ 3 **FACTS**

¶ 4 The State filed a juvenile petition alleging that minors R.T., J.T. and M.T. were neglected based on an injurious environment. Respondent Robert T. is the father of R.T., born April 12, 2009, and respondent John T. is the father of J.T., born September 9, 2002, and M.T., born August 11, 2003. The children share the same mother. The origin of the juvenile petition was an incident in August 2012, when then three-year-old R.T. was discovered by a neighbor crying and

alone in an alley at 8 a.m. The police responded and R.T. was able to identify her house, which was unoccupied. The children's mother did not return home for more than an hour. As a result of the incident, the children were removed from their mother's care and placed in the care of their maternal grandmother. The petition also alleged that the children's mother and respondent fathers each had criminal histories, that John T. had a substance abuse problem with drugs and alcohol, and that in June 2008, John T. struck the children's mother in the head with a bottle during an argument. The petition proposed an order of protection placing the children with the grandmother, allowing their mother to reside there with them but prohibiting any unsupervised contact with the children, and requesting John to submit to two random drug tests a month. The State later dismissed the allegation regarding John's substance abuse. In violation of the order of protection, R.T. was with her mother in October 2012 when she was arrested for shoplifting. The children were removed from their grandmother's care as a result of the violation.

¶ 5 Robert L., the father of R.T., was in the Illinois Department of Corrections (IDOC) when the neglect petition was filed. He filed a mixed answer to the petition but stipulated to the allegations regarding his criminal history, which included the following convictions: resisting a police officer in 2006; aggravated unlawful use of a weapon and possession of cannabis in 2009; and two counts of attempt first degree murder in 2011. He is serving consecutive 45-year terms on the attempt murder convictions and is not eligible for release until 2091. By agreed order, Robert was allowed to remain in the Peoria County jail during the proceedings.

¶ 6 John answered the neglect petition and denied the allegations. He moved to vacate the shelter care order and requested custody of J.T. and M.T. In the motion, John argued that prior to the children's removal, he and their mother co-parented J.T. and M.T., the boys visited him during the week and spent weekends with him, and he and his partner were ready and willing to take custody of the boys. John further argued he had no criminal issues since 2009 and no

substance abuse problems, as evidenced by the State's dismissal of the substance abuse allegations in the juvenile petition. The motion was argued and denied. John filed an amended answer to the petition, denying the allegations regarding his substance abuse and the June 2008 altercation with children's mother. He admitted to the allegation regarding his criminal history, which included unlawful possession of cannabis and aggravated battery in 2001; unlawful possession of cannabis in 2002; aggravated battery in 2004; and unlawful possession of a controlled substance, cocaine, in 2006. Following a hearing, the trial court found the State proved the allegations in the petition, except the allegation regarding a June 2008 altercation between the children's mother and John T.

¶ 7 The trial court held that the children were neglected based on an injurious environment. It admonished Robert and John to cooperate with Department of Children and Family Services (DCFS) and to comply with the service plans. The service plan tasks for both Robert and John required, in part, that they cooperate with DCFS, and obtain and maintain stable housing and employment. Robert was also required to participate in supervised visitation, if and when it was allowed, to participate in counseling, and to complete substance abuse education and anger management classes. John was also required to submit to two random drug tests per month, and to complete a drug and alcohol assessment and an anger management/domestic violence class.

¶ 8 A dispositional hearing took place in May 2013. An integrated assessment dated January 2013 revealed the following information. John was unemployed but working on obtaining his high school equivalency certificate and took the General Education Development (GED) test in March 2013. He was in a 10-year relationship with a woman, with whom he had two children. His partner's two other children also lived with them. A report prepared by the DCFS caseworker indicated that John T.'s children were originally to be placed with him but he failed to show up at court. An addendum indicated that John met monthly with the case worker but

remained unemployed. He tested positive for cannabis several times and missed drops several other times. John was referred for a substance abuse assessment but did not have one done. He refused to participate in domestic violence and anger management classes. John indicated he would cooperate with the services when he was ordered by the court to participate. John was inconsistent in his weekly visitation but acted appropriately during the two-hour visits. Both J.T. and M.T. responded positively to their father during visitation.

¶ 9 The integrated assessment indicated Robert's criminal history began when he was 14 years old and that he has fathered nine children with six different mothers. A May 2013 report by the DCFS caseworker stated that because DCFS regulations mandate it, visitation between Robert and R.T. was set up in March 2013 at the Peoria County jail. The jail was chosen because it was a smaller setting than what would be available in the DOC and a means to gauge whether it was in R.T.'s best interest that visitation continue. The caseworker testified about R.T.'s March visit with Robert in the Peoria County jail. The visit took place via video monitor in the jail waiting room. During the visit, R.T. was shy, nervous and withdrawn. She twice told the caseworker that Robert was not her father. R.T. also said she would not visit again. Robert testified that he used to visit with R.T. a couple of times a month for two nights in a row from the time R.T. was one year old until Robert incarcerated. Prior to March 2013, he had no visitation during his incarceration and had no contact information for R.T.'s mother. He acknowledged R.T. was shy during the visit and described that his other children visited him at Stateville, where the visits take place in a more suitable environment. The visitors' room was a community room where he could sit at the table and talk to his children. The visits were two hours but could be extended. Robert requested the court grant him monthly or bimonthly visitation. John testified he earned his GED certificate in March 2013 and had a college placement examination scheduled. He hoped to pursue a career in welding or as a commercial driver. He regularly

participated in visitation, missing only twice: once for a doctor appointment and once to attend court. John used cannabis to alleviate his chronic nerve pain, which resulted from a gunshot wound.

¶ 10 The trial court thereafter found Robert dispositionally unfit based on criminality and John dispositionally unfit based on criminality and ongoing cannabis use. It denied Robert’s request for visitation until further order of the court, finding it was not in R.T.’s best interest to visit Robert. The trial court further found it was in the best interest of the minors that wardship and guardianship be granted to DCFS. The trial court opted not to set permanency goals but assigned various service tasks to Robert and John. They both appealed and the cases were consolidated on appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, Robert argues that the trial court erred in denying him visitation. John argues that the trial court erred in finding J.T. and M.T. neglected and him unfit and in adjudging J.T. and M.T wards of the court. We note that Robert’s notice of appeal states that he, too, was appealing the neglect and unfitness findings but makes no argument on those issues on appeal. Accordingly, we consider the issues waived as to Robert. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 1967); *In re R.S.*, 382 Ill. App. 3d 453, 464 (2008).

¶ 13 The Juvenile Court Act of 1987 (Act) provides the process for removal of children from their parent(s). 705 ILCS 405/1-1 *et seq.* (West 2012). One ground for removal is neglect; a minor is neglected where his or her “environment is injurious to his or her welfare.” 705 ILCS 405/2-3(1)(b) (West 2012). Neglect is defined as the “ ‘failure to exercise the care that circumstances justly demand.’ ” *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004) (quoting *In re N.B.*, 191 Ill. 2d 338, 346 (2000)). Injurious environment includes “the breach of a parent’s duty to ensure a ‘safe and nurturing shelter’ for his or her children.” *Arthur H.*, 212 Ill. 2d at 463

(quoting *N.B.*, 191 Ill. 2d at 346). We will not reverse a trial court's neglect finding unless it is against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App. 3d 1050, 1056 (2009).

¶ 14 After a trial court adjudges a child neglected, it must hold a dispositional hearing to determine whether it is in the child's best interest to be made a ward of the court. 705 ILCS 405/2-22(1) (West 2012). To make a child a ward of the court, the trial court must find that the parent is dispositionally unfit to care for the child. 705 ILCS 405/2-27(1) (West 2012). If the trial court makes the child a ward of the court, it must determine the proper disposition, considering the best interest of the child as its overriding concern. 705 ILCS 405/2-27(1) (West 2012). The trial court may not return a child to a parent found unfit until the trial court enters an order of fitness. 705 ILCS 405/2-23(1)(a) (West 2012). We will not reverse a trial court's dispositional findings unless its factual findings are against the manifest weight of the evidence, or it abused its discretion by issuing an inappropriate dispositional order. *In re K.L.S.-P.*, 383 Ill. App. 3d 287, 294 (2008).

¶ 15 We begin with Robert's claim that the trial court erred in denying his request for visitation with R.T. He argues that the trial court improperly based its denial on the March 2013 visitation, which was not a positive experience for R.T., and R.T.'s desire to not participate in visitation.

¶ 16 A parent retains residual rights and responsibilities as to his child after custody or guardianship have been transferred, including the right to reasonable visitation. 705 ILCS 405/1-3(13) (West 2012). A trial court may limit visitation when in the best interest of the minor. 705 ILCS 405/1-3(13) (West 2012). A trial court may suspend visitation pending resolution of an ongoing issues, such as emotional conflicts between a child and his parent. *In re Taylor B.*, 359 Ill. App. 3d 647, 651 (2005).

¶ 17 Robert is serving two consecutive 45-year terms of imprisonment, with an estimated release date of August 2091. Robert testified that prior to his incarceration in 2011, he would have visitation with R.T. for two nights in a row a couple of times a month once she turned a year old. He had no communication with R.T. after 2011 because he did not have contact information for R.T.'s mother. In addition to Robert's testimony, the trial court also considered the caseworkers' reports and her testimony about the March 2013 visitation between Robert and R.T. at the Peoria County jail. The caseworker described that R.T. was shy, nervous, and withdrawn during the 20-minute video visit. During and after the visit, R.T. told the caseworker that Robert was not her father and refused to participate in any further visitation. DCFS and the children's guardian *ad litem* (GAL) argued against visitation due to Robert's lengthy prison term and his lack of positive influence as a parent. The trial court considered that, under the circumstances, visitation was not in R.T.'s best interest at the present time but acknowledged that R.T. might change her mind or that visitation might be appropriate in the future. We agree, and find that its denial of visitation was not against the manifest weight of the evidence.

¶ 18 John argues that the trial court's neglect and unfitness findings were in error. He asserts that there was no evidence of an injurious environment as to J.T. and M.T., that the facts do not support the unfitness finding, and that his ability and willingness to care for J.T. and M.T. refute the trial court's wardship determination.

¶ 19 We look first to John's argument that the State did not present any evidence establishing that J.T. and M.T. were subjected to an injurious environment. He maintains that he did not contribute and that J.T. and M.T. were not involved, when R.T. was found wandering in the alley or when the children's mother was arrested for shoplifting while with R.T. John further maintains that the State's failure to prove its allegation in the neglect petition regarding an

altercation between him and the children's mother supports his claim that the neglect finding was in error.

¶ 20 The anticipatory neglect theory allows the State to seek protection for not only children who have been directly neglected but also those for whom a probability of neglect exists because they live with, or in the future will live with, an individual found to have neglected another child. *Arthur H.*, 212 Ill. 2d at 468. Although there is no *per se* rule that the neglect of one child conclusively establishes the neglect of other children in the same household, proof of neglect of one child is admissible evidence on the neglect of another child for whom the parent is responsible. *Arthur H.*, 212 Ill. 2d at 482 (quoting 705 ILCS 405/2-18(3) (West 2012)).

¶ 21 The State presented evidence sufficient to support its allegation of an injurious environment under a theory of anticipatory neglect. The State filed the neglect petition after then three-year-old R.T. was found crying alone in an alley. M.T. and J.T. were not in the home from which R.T. wandered and the record does not indicate where they were when the alley incident occurred. When their mother was arrested while out shopping with R.T., the boys were not with her and again there was no evidence as to their whereabouts. However, the trial court was not required to wait for M.T. and J.T. to be left alone by their mother or for them to witness their mother's arrest after she committed crimes in their presence in order to find them neglected. The evidence presented about their mother's conduct regarding R.T. established that she failed to exercise the care demanded by the circumstances and breached her duty to ensure a safe and nurturing shelter for her children, including M.T. and J.T. We find that the trial court's neglect determination was not against the manifest weight of the evidence.

¶ 22 John also challenges the trial court's unfitness finding and adjudication of wardship. He argues that his criminal offenses were committed in the past, were mostly controlled substance violations, and did not affect his ability to parent his children due to incarceration. John further

argues that his cannabis use was for medicinal purposes to treat his chronic nerve pain and that medical marijuana legislation was awaiting enactment. See 410 ILCS 130/1 *et seq.* (West 2014) (Compassionate Use of Medical Cannabis Pilot Program Act authorizes specific uses of medical marijuana effective January 1, 2014).

¶ 23 At the dispositional stage, the trial court decides whether the children’s health, safety, and best interests require they be made wards of the court. 705 ILCS 405/2-21(2) (2012). The trial court also decides whether the parent is fit to care for the children. 705 ILCS 405/2-27(1) (West 2012). An unfitness determination pursuant to section 2-27 of the Act does not result in the termination of parental rights and the necessary burden of proof is preponderance of the evidence. 705 ILCS 405/2-27 (West 2012); *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998). A dispositional hearing after an unfitness finding serves the purpose of allowing the trial court to decide what further actions are in the children’s best interests. *In re April C.*, 326 Ill. App. 3d 225, 237 (2001). A disposition of wardship is proper where the trial court has determined that the parent is unfit, unable or unwilling, for reasons other than financial circumstances alone, to care for his children and wardship is in the children’s best interests. *In re K.L.S.-P.*, 381 Ill. App. 3d 194, 195 (2008).

¶ 24 The trial court found John unfit based on his criminal history and ongoing marijuana use. We find the evidence supports the trial court’s unfitness findings. John was twice convicted of unlawful possession of cannabis (2001, 2002) and aggravated battery (2001, 2004). He was also convicted of unlawful possession of cocaine (2006). He continued to test positive for cannabis throughout the proceedings until he ultimately ceased participating in the testing. We reject John’s claim that his prior convictions were mostly for controlled substance violations and did not affect his parenting ability due to incarceration. Several convictions took place after M.T. and J.T. were born and thus necessarily affect his ability to parent. In addition to the drug

convictions, which indicate escalating usage, John was also convicted two times of aggravated battery. After initially denying that he used marijuana, John conceded that he continued to use it but solely for medical purposes. At the time the dispositional proceedings took place, medical marijuana was not legal in Illinois. While we acknowledge that Medical Cannabis Act has become effective, that fact is of no assistance to John. His continued unlawful use of marijuana carries with it a continued risk of arrest, conviction, and incarceration. The record demonstrates that John had not completed any services to date and refused to participate in further services. He remained unemployed despite earning a GED and testifying that he was taken a college placement test in order to work toward establishing a career. We find the trial court's unfitness findings were not against the manifest weight of the evidence. We further find that because John was found unfit to care for his children, the trial court properly adjudged the children wards of the court.

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

¶ 26 Affirmed.