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2014 IL App (3d) 130713-U

Order filed July 25, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> J.S. and G.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-13-0713 and 3-13-0714
)	Circuit Nos. 13-JA-125 and 13-JA-126
v.)	
)	
Gary S.,)	
)	The Honorable
Respondent-Appellant).)	Mark E. Gilles,
)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the circuit court's finding from a dispositional hearing that the respondent was an unfit parent.
- ¶ 2 The circuit court entered orders finding the minors, J.S. and G.S., to be neglected and finding the respondent to be an unfit parent. On appeal, the respondent argues that several of the court's factual findings related to his fitness as a parent were erroneous. We affirm.

FACTS

¶ 3

¶ 4

On May 9, 2013, juvenile petitions were filed alleging that the minors, J.S. and G.S., were abused. The petition also alleged that the minors were neglected by reason of an injurious environment, in part due to the respondent's extensive criminal history. When the circuit court adjudicated the minors abused and neglected on July 18, 2013, the court included in its written order that the respondent "did not contribute to abuse/neglect as alleged in petition."

¶ 5

Lutheran Social Services compiled a dispositional hearing report on August 8, 2013. With regard to the respondent, the report noted that he was incarcerated "for charges relating to possession of 2000-5000 grams of Cannabis in 2009." He had a projected parole date of October 25, 2014, and a projected discharge date of October 15, 2016. He had gang affiliations in the past and had been arrested 19 other times. The report also noted that the respondent visited with the minors once per month and that the visits went well. He parented appropriately and had a strong bond with the minors.

¶ 6

An integrated assessment was also compiled and filed with the circuit court. A background check on the respondent was performed for the integrated assessment, and the respondent's criminal history included, but was not limited to, the following: (1) a conviction for manufacturing and delivering cannabis in 2009, for which he received an eight-year sentence; (2) a conviction for driving on a suspended or revoked license in 2006; (3) incarceration from May 26, 2005, to July 15, 2005, for theft; (4) incarceration from July 22, 2004, to September 4, 2004; (5) convictions for forgery and theft in 2003; (6) incarceration from October 23, 2001, to March 12, 2003; and (7) convictions for home invasion, burglary, and three counts of residential burglary in 1990, for which he received sentences of 20, 7, 15, 15, and 20 years, respectively. The respondent also reported that he used cannabis and cocaine in the past. With regard to

mental health, the caseworker reported that the respondent's "thought processes were clear and goal directed and he did not exhibit any signs of psychosis however he did appear to have difficulties in taking responsibility for his actions." The caseworker also reported that the respondent "[did] not appear to understand or could not articulate how his behaviors have contributed to the instability in the children's lives. [He] readily pointed out what other members of the family should be doing but took little responsibility for his actions and how they impacted his sons." The caseworker also asked the respondent how his incarceration had impacted the minors, but the respondent stated that he did not think it impacted them. In addition, the caseworker noted that the respondent appeared to be a knowledgeable parent and was a potential source for reunification in the future. The assessment recommended numerous services for the respondent to complete.

¶ 7 On August 22, 2013, the circuit court held a dispositional hearing. The State rested on the dispositional hearing report. The respondent testified that he had been incarcerated since November 2010. He had completed a custodial maintenance class and several classes through the chapel services he had attended, including a parenting class and an anger management class. Upon release, he planned to try to reconcile his relationship with his wife.

¶ 8 At the close of the hearing, the court found that it was in the minors' best interest to be made wards of the court, that DCFS be named guardian, and that the respondent was unfit. The court's written order contained the following findings with regard to the respondent's unfitness: "incarcerated; long criminal history; takes no responsibility for how his incarceration has impacted his children & shifts blame." The respondent appealed.

¶ 9 ANALYSIS

¶ 10 The respondent's sole argument on appeal is that the circuit court erred when it made certain factual findings related to his fitness as a parent. The respondent concedes that his incarceration at the time of the dispositional hearing could be a sufficient basis to find him to be an unfit parent. However, the respondent argues that the court erred when it found the following three aspects contributed to his unfitness: (1) his long criminal history; (2) his lack of acknowledgment that his incarceration had an impact on the minors; and (3) his blame-shifting. The respondent argues that these three findings were contrary to the court's previous finding that the respondent did not contribute at all to the abuse or neglect of the minors, and he requests that we vacate these findings because he fears they may be used against him in later proceedings in the case.

¶ 11 At a dispositional hearing held pursuant to section 2-27 of the Juvenile Court Act of 1987 (705 ILCS 405/2-27 (West 2012)), it is the State's burden to prove parental unfitness by a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. On review, we will not disturb the court's unfitness finding unless it is contrary to the manifest weight of the evidence. See *id.* ¶ 23. A ruling is contrary to the manifest weight of the evidence if the record "clearly demonstrates" that the opposite result was proper." *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998).

¶ 12 The respondent's argument on appeal appears to improperly link the findings behind the adjudication of the minors and the assessment of parental unfitness at a dispositional hearing.

"Our supreme court has held that the only question to be resolved at an adjudicatory hearing is whether a child is neglected, and not whether each parent is neglectful; it is only after the trial court has adjudicated a minor neglected that the court is to consider

the actions of the parents." *In re K.S.*, 365 Ill. App. 3d 566, 570 (2006) (citing *In re Arthur H.*, 212 Ill. 2d 441, 466-67 (2004)).

After an adjudication has taken place, the case moves to a dispositional hearing at which "the court shall determine whether it is consistent with the health, safety and best interests of the minor and the public that he be made a ward of the court." 705 ILCS 405/2-21(2) (West 2012). If the court has made the minor a ward of the court, and if the court also finds that "the parents *** are unfit or 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," then the court has the discretion to choose certain placement options for the minor. 705 ILCS 405/2-27(1) (West 2012). Contrary to the respondent's argument, parental unfitness at the dispositional hearing is a consideration separate from the parent's contribution—or lack thereof—to the abuse or neglect of the minor. See *In re A.P.*, 2013 IL App (3d) 120672, ¶ 16 ("[a] parent may be found unfit even if the juvenile petition contains no allegations against him").

¶ 13 Based on the aforementioned law, there is no basis for the respondent's argument that a logical inconsistency exists between the circuit court's adjudicatory finding that he was not responsible for the abuse or neglect of the minors and the court's dispositional findings related to his fitness as a parent. Given the evidence presented to the court, especially the integrated assessment, there was no error in the court's findings that his unfitness was due in part to his lengthy criminal history, to his inability to recognize the impact his incarceration had on the minors, and to his tendency to point out the shortcomings of his family while at the same time failing to take responsibility for his own actions and their impact on the minors. All of these

matters—including his incarceration—contributed to the finding that he was an unfit parent under section 2-27(1). 705 ILCS 405/2-27(1) (West 2012). Accordingly, we hold that the circuit court's dispositional order was not erroneous.

¶ 14

CONCLUSION

¶ 15

The judgment of the circuit court of Peoria County is affirmed.

¶ 16

Affirmed.