

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).

2014 IL App (3d) 130976-U

Order filed April 17, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re C.S.,</i>)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Tazewell County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0976
)	Circuit No. 13-JA-30
v.)	
)	
A.H.,)	
)	
Respondent-Appellant).)	Honorable Albert L. Purham, Jr.,
)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding of unfitness is not against the manifest weight of the evidence.

¶ 2 The circuit court of Tazewell County found respondent, A.H., to be an unfit guardian. He appeals, claiming the trial court's finding is against the manifest weight of the evidence.

¶ 3 BACKGROUND

¶ 4 On May 9, 2013, the State filed a petition alleging the minor, C.S., to be neglected. The petition claims: the minor's mother is a known prostitute and has not cared for the child in a year; the mother developed an inappropriate care plan by placing the minor, who is severely autistic, with respondent, who the mother knew to have a drug problem; the respondent was indicated by the Department of Children and Family Services (DCFS), in April of 2013, for inadequate supervision of the minor; the father of the minor is unknown; and the mother cannot provide adequate parenting for the minor. Respondent was not a party to this initial petition.

¶ 5 The trial court entered a temporary custody order on May 10, 2013, which ordered that temporary custody of the minor be awarded to DCFS. On May 30, 2013, respondent filed a motion to intervene, which claimed that he had been "appointed the child's short-term guardian by the mother, pursuant to 755 ILCS 5/11-5.4." Respondent's motion contains an exhibit, executed by the mother, which states:

"I give [A.H.] permission to take care of all medical, day care, and educational needs that may arise for [C.S.] from March 22, 2013, through March 21, 2014."

¶ 6 The trial court granted respondent's motion to intervene. Thereafter, the State filed an amended petition, which reiterated the allegations that the mother made an inappropriate care plan by placing the minor in respondent's care where respondent had previously been found unable to parent in Tazewell County, that DCFS received a report it deemed "indicated" in April of 2013 regarding responding for inadequate supervision of the minor, and that respondent tested positive for cocaine in July of 2013.

¶ 7 Respondent filed an answer, stipulating that the State could prove the allegations in the petition as amended. The matter proceeded to a dispositional hearing, which began on October

31, 2013, and concluded on November 22, 2013. Lutheran Social Services filed a report for the hearing that noted respondent lived with his mother in Morton, Illinois, met with the caseworker on a regular basis, and had been cooperative.

¶ 8 The report indicates that respondent engaged in weekly visits with the minor and appeared appropriate during those visits. The minor seemed happy to see respondent and showed no fear of him. Respondent completed parenting classes and random drug screens, one of which tested positive for cocaine.

¶ 9 Caseworker Beth Heuerman testified at the dispositional hearing. She noted that respondent showed "during the visits [that] he's able to parent" the minor. Nevertheless, Lutheran Social Services recommended finding him unfit as the caseworker "believe[d] he would benefit from services."

¶ 10 Heuerman continued, noting that respondent had cared for the minor for approximately four years. She acknowledged that other than leaving the minor at home alone, "he's done a fairly good job caring for [the minor] other than that." Heuerman indicated that a bond existed between respondent and the minor.

¶ 11 At the time of the October 31, 2013, hearing, respondent was engaged in some home remodeling, which exposed tack strips for carpeting and resulted in furniture being stacked up. Other than those items, respondent's house was appropriate for the minor.

¶ 12 A concern of Heuerman's about respondent included his positive urine test. A follow-up hair follicle test came back negative. The negative hair test, coupled with respondent's denial of cocaine usage, "remedied" a majority of that concern. Heuerman acknowledged, however, that respondent took the hair test outside her presence so she could not be certain of its accuracy.

Moreover, in his assessment, respondent acknowledged that cocaine had been one of his drugs of choice.

¶ 13 Heuerman expressed concerns beyond the positive urine test. Those concerns included the respondent's ability to care for the minor due to instances of "leaving him unsupervised." She also discussed the existence of cameras placed throughout the house. Respondent installed one camera on the floor by a radiator in the room of his 14-year-old daughter. The daughter did not know of the existence of the camera. The final item that concerned the caseworker centered around inappropriate comments of a sexual nature respondent made to his 14-year-old daughter.

¶ 14 The caseworker indicated that information regarding the hidden cameras in respondent's residence came to her when the case was transferred from another caseworker. Respondent claimed to need the cameras for his business which involved fixing computers.

¶ 15 During her testimony, Heuerman discussed the dispositional report that indicates the minor was six years old when diagnosed with severe autism. It continues, noting that respondent has a long history of substance abuse. The report notes that the minor began exhibiting sexualized behaviors while living with foster parents; those being, humping another person's side and taking a person's hand and sticking it down his own pants.

¶ 16 Heuerman testified that she consulted an autism specialist regarding the sexual behaviors exhibited by the child. The expert indicated such behaviors were not normal for an autistic child and suggested a victim assessment. The minor's developmental delays, however, prevented a victim's assessment.

¶ 17 To conclude, the caseworker summarized that her concerns regarding returning the minor to the care of respondent stemmed from inappropriate sexual comments respondent made to his daughter, the positive urinalysis, respondent's prior drug use, and the presence of cameras in the

home, which were hidden from the daughter. Her main concern, however, stemmed from instances where respondent left the minor unsupervised. She also stated that making DCFS the minor's guardian would increase the services the minor could acquire.

¶ 18 Before dismissing her, the court asked the caseworker if the house was currently suitable for the minor to return. She indicated that with the nail strips exposed, she did not believe it appropriate for the minor to inhabit. However, Heuerman noted that she had not been to the residence for two weeks. The court then continued the hearing so that Heuerman could return to the residence to assess its present condition.

¶ 19 The remaining transcript from the October 31, 2013, hearing indicates that the court, respondent, and other parties seemed to be discussing placement of respondent's 14-year-old daughter with a relative outside of respondent's home. Without the entire file from that matter, we cannot be sure of the circumstances which led to that situation or its resolution.

¶ 20 Also contained within the record on appeal is the integrated assessment that indicates the respondent is the biological father of 14-year-old, B.H. The assessment notes respondent would leave C.S. home alone when he took B.H. to school in the mornings.

¶ 21 The assessment details previous activity. It notes that in October of 2006, respondent was found unable to parent B.H. due to a long history of drug abuse. Respondent was arrested at age 15 for growing marijuana, convicted in 1989 for possession of a controlled substance, which resulted in incarceration in the Department of Corrections, and has eight arrests and one conviction for burglary.

¶ 22 The assessment states that B.H. came to live with respondent in 2011 and respondent acknowledged that he did "not know how to raise a teenage daughter." He claimed not to have been a good father to B.H., stating he did not pay enough attention to her while she lived with

him. Respondent admitted "snapping" B.H.'s bra, which he acknowledged was inappropriate. He further reported asking B.H. about the color of her pubic hair. He explained this behavior away by claiming that B.H. suffered from low self-esteem and feelings of mental inadequacy. His question regarding her pubic hair was simply an attempt "to prove to her that she was not a 'true blonde' by the difference in the color of her pubic hair from that on her head."

¶ 23 The integrated assessment concluded with the recommendation of a goal of returning the minor to respondent's care in the next 5 to 12 months.

¶ 24 The hearing continued on November 22, 2013. The caseworker noted that respondent had fixed the exposed nail strips and all the furniture was in order at respondent's residence.

¶ 25 Following the hearing, the trial court found respondent unfit. The trial judge announced three main reasons for his finding in the dispositional order that include, "drug usage, hidden camera in his daughter's room—she was the age of puberty, leaving a severe autistic child home alone." The trial court entered the dispositional order on November 22, 2013. Respondent filed his notice of appeal on December 20, 2013. This appeal followed.

¶ 26 ANALYSIS

¶ 27 Respondent argues on appeal that the trial court's finding he is unfit to act as the guardian of the minor is against the manifest weight of the evidence. Before addressing the substance of this argument, we feel compelled to question whether the issue is moot. The record reveals that the trial court allowed respondent to intervene in this matter after the minor's mother executed a document giving respondent short-term guardianship of the minor pursuant to section 11-5.4 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/11-5.4 (West 2012)).

¶ 28 As noted above, the mother executed the instrument on March 22, 2013, and it terminated on March 21, 2014. Pursuant to statute, only "one written instrument appointing a short-term

guardian may be in force at any given time" and the instrument can, at most, confer rights upon the guardian "for a period of 365 days from the date the appointment is effective." 755 ILCS 5/11-5.4(c) (West 2012).

¶ 29 By operation of the Probate Act and the document itself, respondent's guardianship of the minor terminated on March 21, 2014, raising questions as to whether the trial court could grant him the relief he requested below, the return of the minor to his custody, should this court reverse. Nevertheless, the mootness doctrine contains many exceptions including the "Capable of Repetition Yet Avoiding Review Exception" (*In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009)), which makes review appropriate.

¶ 30 This exception allows an appellate court to consider a moot appeal when "the challenged action [is of] a duration too short to be fully litigated prior to its cessation" and when there is "a reasonable expectation that 'the same complaining party would be subjected to the same action again.'" *Id.* at 358 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)). Both factors are present here.

¶ 31 Unless the mother's parental rights are terminated, and we have no indication they are, she could execute another writing granting respondent short-term guardianship over the minor. Pursuant to section 11-5.4(c) (755 ILCS 5/11-5.4(c) (2012)), the term of that guardianship would not exceed one year. As this case has demonstrated, the duration of respondent's guardianship is too short to allow the parties to fully litigating the matter of respondent's fitness through appellate disposition. As such, we will address the merits of respondent's argument.

¶ 32 "A trial court's determination regarding dispositional unfitness will be reversed 'only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order.'" *In re K.B.*, 2012 IL

App (3d) 110655, ¶ 23 (quoting *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *Id.* ¶ 15.

"A reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result." *Id.* ¶ 23.

¶ 33 We cannot say the trial court's finding of unfitness is against the manifest weight of the evidence. Therefore, we affirm the judgment of the trial court.

¶ 34 After considering the dispositional report, the integrated assessment, and the testimony at trial, the trial court found respondent unfit due to his drug usage, the fact that he put hidden cameras in his 14-year-old daughter's room, and his penchant for leaving the autistic minor home alone. Respondent claims the trial court erred when considering drug usage as a basis for the finding of unfitness. We disagree.

¶ 35 While we acknowledge the respondent produced a hair follicle test that proved negative for drug usage, the caseworker stated she had no control over the test sample and could not be certain it came from respondent. Respondent acknowledged that cocaine was a drug of choice during his long history of drug use, and his urine drop tested positive for cocaine. It is the province of the trier of fact, and not this court, to resolve conflicts in testimony and make credibility determinations. *People v. Jones*, 273 Ill. App. 3d 377, 384 (1995).

¶ 36 Similarly, respondent claims his statements contained within the integrated assessment should belie any fears regarding the camera in his 14-year-old daughter's room: those being, that he needed to test camera equipment for his computer business. Again, it was for the trial court to determine the credibility of respondent's explanation. When coupled with his statements regarding what color pubic hair his 14-year-old daughter had and the bra-snapping incident, we

cannot say that the trial court's reference to the presence of the camera in the dispositional order was inappropriate.

¶ 37 Respondent acknowledges that he left the minor home alone on multiple occasions and doing so was poor judgment. However, he claims the circumstances under which he did so "constitute mitigating factors." Those circumstances include raising a teenage daughter for the first time in his life, coupled with the agitation the minor would suffer were the respondent to wake him up too early. Claiming the 14-year-old girl no longer lives with him, respondent argues that evidence indicated he will no longer leave the minor home alone and, as such, the trial court erred in considering the matter when finding him unfit. We disagree.

¶ 38 While the removal of the daughter from respondent's home may merit consideration, it does not negate the fact that respondent left a severely autistic child home alone. Again, it is the trial court's province and not for this court to determine what weight to give respondent's assurance that he will no longer leave the minor home alone.

¶ 39 The trial court clearly found respondent's behaviors troubling. Those behaviors included a recent urine drop that tested positive for cocaine, respondent's interaction with his teenage daughter, and respondent's decision to leave the minor home alone on multiple occasions. Those facts form the basis for the trial court's finding that respondent is currently unfit to act as the minor's guardian. We cannot say that the opposite conclusion is clearly evident. As such, we hold the trial court's finding of unfitness is not against the manifest weight of the evidence.

¶ 40 Finally, respondent argues that the trial court improperly focused on his actions over a very short time period and failed to give proper weight to his actions during the entire four years he cared for the minor. Citing to *Adams v. Adams*, 103 Ill. App. 3d 126 (1982), respondent notes that in "determining fitness a court must look not to the conduct of the parent during any single,

isolated period of time but to the conduct of the parent over the entire period of time in question, that is, to the entirety of the parent's conduct." *Id.* at 132-33.

¶ 41 This, respondent claims, the trial court did not do. Respondent argues the trial court only focused on his recent activity and gave little credence to the four years he cared for the minor, which were without incident. We disagree.

¶ 42 When announcing its ruling, the trial court specifically stated that it had considered the dispositional report, the arguments of counsel, and the evidence which everyone "had the opportunity *** to present. We had a further hearing where there was a lot of information that was given."

¶ 43 The trial court continued, specifically noting that it was not going to find respondent unable to care for the minor, but that it was deeply troubled regarding the cavalier attitude respondent had concerning leaving the minor home alone. For this reason, the court put a plan in place that directed respondent to complete autism training classes in hopes he would better understand the troubles associated with leaving the minor alone. The court specifically stated that it hoped after doing so, "maybe in six months you'll be found fit because you will take the class on the autism so that you better realize this."

¶ 44 We disagree with respondent's conclusion that the trial court arrived at the finding of unfitness by only considering his actions over a short time period. The trial court's statement that it considered all the evidence and arguments of counsel, coupled with its desire to restore respondent to fitness, signifies to us that the court properly considered the totality of the care respondent afforded the minor.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 47 Affirmed.