

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 (4th) 131038-U

NOS. 4-13-1038, 4-13-1039, 4-13-1040, 4-13-1041 cons.

FILED

April 1, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Mason County
v. (No. 4-13-1038)	)	No. 12JA4
CHRISTINA STONE,)	
Respondent-Appellant.)	
_____)	
)	
In re: D.S., a Minor,	)	No. 12JA5
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-1039))	
CHRISTINA STONE,)	
Respondent-Appellant.)	
_____)	
)	
In re: P.D., a Minor,	)	No. 12JA6
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-1040))	
CHRISTINA STONE,)	
Respondent-Appellant.)	
_____)	
)	
In re: M.D., a Minor,	)	No. 12JA7
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-1041)	)	Honorable
CHRISTINA STONE,	)	Alan Tucker,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's decision to close the neglect

proceedings and vacated portions of the dispositional orders.

¶ 2 In January 2012, the State filed petitions for adjudication of wardship with respect to N.S., D.S., P.D., and M.D., the minor children of respondent, Christina Stone. In May 2012, the trial court found respondent unfit but did not make the minors wards of the court. In April 2013, respondent filed a motion for restoration of fitness and a supplemental petition to reinstate wardship. In September 2013, respondent filed a motion to vacate. In October 2013, the court denied the motions, finding it had no jurisdiction to reopen the cases.

¶ 3 On appeal, respondent argues the trial court erred in dismissing her motions based on lack of jurisdiction. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 In January 2012, the State filed petitions for adjudication of wardship with respect to N.S., born in 2002; D.S., born in 2004; and P.D., born in 2008, alleging they were neglected minors pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)) in that they resided in an environment that was injurious to their welfare. The petitions alleged the Department of Children and Family Services (DCFS) had an intact case in place involving respondent while she was caring for the children, and since that time she failed to cooperate with services by failing to attend scheduled meetings with DCFS, attend Alcoholics Anonymous and Narcotics Anonymous meetings as directed, attend and complete domestic violence counseling, maintain a stable residence, and keep DCFS advised as to her current address and phone number. A fourth petition alleged M.D., born in 2010, was similarly neglected in that he resided in an environment injurious to his welfare as evidenced by the fact that his blood tested positive for opiates and marijuana at birth. The petitions named Dean S. as the father of N.S. and D.S. and Patrick D. as the father of P.D. and M.D. The fathers

are not parties to this appeal.

¶ 6 In April 2012, the trial court entered adjudicatory orders finding the minors were neglected and the neglect was inflicted by respondent. In May 2012, the court conducted the dispositional hearing. The State recommended respondent be found unfit, the minors not be made wards of the court, custody of the minors be given to their respective fathers, and the cases dismissed. The court stated, in part, as follows:

"The Court is well aware of the family court proceedings involving these minors and at this point in time the Court is cognizant of the limited resources that [DCFS] has. Also well aware of the efforts made by the respective fathers in family court as well as in this court. And quite frankly I think [respondent] is not deserving of any further attempts by [DCFS]. She has rejected and refused and done nothing, so for the Department to continue to try to force services down her throat she does not want, seems to me a complete waste of the time and effort and money. Therefore the Court will adopt the recommendations of [DCFS]. I will find [respondent] to be unfit. *** The essence of the matter is this case will be dismissed. Orders that are in place in family court will be the order of the Court, which in essence places the children in the custody, care and control as far as [M.D.] and [P.D.] with Mr. D., as far as [D.S.] and [N.S] with Mr. S. Each of those respective fathers has given this Court nothing that they are not good and caring fathers either in juvenile proceedings or family court

proceedings. So that will be the order of the Court."

The written dispositional order noted respondent was found unfit, the minors were not made wards of the court, custody of the minors was placed with and guardianship remained with their respective fathers, the petitions were dismissed, and the causes terminated and closed.

¶ 7 In April 2013, respondent filed a motion for restoration of fitness. In support, respondent stated, upon information and belief, she completed parenting and safety classes and substantially completed substance-abuse treatment. Further, she participated in other core services set forth in her service plan and it was anticipated she would soon complete all her core services. Accordingly, respondent claimed she had made "significant progress sufficient to refute the State's claim of unfitness." Respondent asked the trial court to reopen the case, find her fit, and establish a reunification plan for her and the minors. Respondent also filed a supplemental petition to reinstate wardship, seeking the return of custody of the minors and/or an express order for reasonable scheduled visitation.

¶ 8 In September 2013, respondent filed a motion to vacate and for clarification pursuant to section 2-1301 and section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1301, 2-1401 (West 2012)), arguing the trial court did not have authority to name a guardian for the minors without first making them wards of the court. As such, respondent argued the dispositional orders were void. Respondent asked the court to vacate its May 2012 dispositional orders or provide clarification of the orders, reinstate her as guardian of the minors and restore custody and reasonable visitation to her, and for all other relief the court deemed equitable and just. The State filed motions to dismiss respondent's filings.

¶ 9 In October 2013, the trial court held a hearing on the motions. The court denied the motions, finding it did not have jurisdiction to reopen the cases. The court indicated its

ruling was a final and appealable order and no just reason existed for delaying enforcement or appeal. This appeal followed. See Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010) (allowing appeals from a judgment or order denying relief under a section 2-1401 petition).

¶ 10

II. ANALYSIS

¶ 11 Respondent argues the trial court erred in dismissing her section 2-1401 motion based on the lack of jurisdiction. The State agrees, contending the court's dispositional orders were void.

¶ 12 Section 2-1401 of the Procedure Code sets forth a statutory procedure by which final orders and judgments may be challenged more than 30 days after entry. 735 ILCS 5/2-1401 (West 2012); *People v. Vincent*, 226 Ill. 2d 1, 7, 871 N.E.2d 17, 22 (2007). Section 2-1401 limits the time in which a defendant may obtain relief, stating "the petition must be filed not later than 2 years after the entry of the order or judgment." 735 ILCS 5/2-1401(c) (West 2012). Under the Juvenile Court Act, a petition for relief from a final order under section 2-1401 of the Procedure Code "must be filed not later than one year after the entry of the order or judgment." 705 ILCS 405/2-32 (West 2012). The limitations period, however, does not apply to petitions brought on voidness grounds. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104, 776 N.E.2d 195, 201 (2002); see also *In re Custody of Ayala*, 344 Ill. App. 3d 574, 583, 800 N.E.2d 524, 534 (2003).

¶ 13 In the case *sub judice*, the trial court entered its dispositional order finding respondent unfit in May 2012. In September 2013, respondent filed a motion to vacate and for clarification under section 2-1401, arguing the dispositional orders were void. Thus, although the motion to vacate was filed more than one year after the entry of the dispositional orders, the trial court had jurisdiction based on respondent's voidness claim.

¶ 14 Section 2-22(1) of the Juvenile Court Act provides, in part, as follows:

"At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2012).

Only after a finding the minor should be made a ward of the court can the court issue a dispositional order affecting the future conduct of the parents. 705 ILCS 405/2-23(1) (West 2012). Moreover, the court's consideration of the need for guardianship and whether a parent is unfit must be preceded by the court's finding that it is in the minor's best interest to become a ward of the court. 705 ILCS 405/2-27(1)(a) (West 2012).

¶ 15 In *In re C.L.*, 384 Ill. App. 3d 689, 693, 894 N.E.2d 949, 953 (2008), the trial court found the minors neglected and then conducted the dispositional hearing. The court awarded custody and guardianship of the minors to their father without making them wards of the court and closed the cases. *C.L.*, 384 Ill. App. 3d at 693, 894 N.E.2d at 953. The Third District noted that "without designating the minors to be wards of the court, the judge could not name a guardian." *C.L.*, 384 Ill. App. 3d at 696, 894 N.E.2d at 956. The Third District also stated as follows:

"Dispositional decisions, such as visitation orders, findings of unfitness, and determinations of guardianship are statutorily predicated upon the court first making the minors wards of the court. [Citations.] The trial court's order regarding guardianship,

which has been challenged by mother in this appeal, was unauthorized under sections 2-23(1) and 2-27(1). [Citations.] Related thereto, the trial court's consideration of dispositional unfitness was also premature and unauthorized, under section 2-27(1), since these children were not made wards of the court." *C.L.*, 384 Ill. App. 3d at 697, 894 N.E.2d at 956.

The Third District affirmed the court's decision to close the minors' cases while simultaneously vacating the court's decision to grant guardianship of the children to the father. *C.L.*, 384 Ill. App. 3d at 698, 894 N.E.2d at 957.

¶ 16 In this case, the trial court found respondent unfit but did not make the minors wards of the court. Thus, the court's May 2012 dispositional orders pertaining to respondent's fitness and guardianship were void and must be vacated. See *In re D.W.*, 214 Ill. 2d 289, 309, 827 N.E.2d 466, 480 (2005) (stating dispositional orders not authorized by statute are void); *C.L.*, 384 Ill. App. 3d at 697, 894 N.E.2d at 956. That said, the court's failure to make the minors wards of the court did not prevent it from closing the cases. See *C.L.*, 384 Ill. App. 3d at 696, 894 N.E.2d at 955 (stating the Juvenile Court Act does not require a court to enter any finding before closing a juvenile case at the dispositional stage).

¶ 17 Respondent also argues the trial court had jurisdiction to consider her motion for restoration of fitness and her supplemental petition to reinstate wardship. However, given the fact that the dispositional orders, wherein the court found her unfit and placed guardianship of the minors with their respective fathers, were void, we find any decision on respondent's motion to restore fitness and petition to reinstate wardship is now moot. Thus, the net effect of the vacatur of the dispositional orders is to preserve the status quo that has been established in the

family-law cases subject to modification under the provisions of the Illinois Marriage and Dissolution of Marriage Act. See, *e.g.*, 750 ILCS 5/601 to 611 (West 2012).

¶ 18

III. CONCLUSION

¶ 19 For the reasons stated, regarding the trial court's May 2012 dispositional orders, we (1) vacate those portions of the dispositional orders finding respondent unfit and granting custody and guardianship of the minors to their respective fathers; and (2) affirm the court's decision to close these cases.

¶ 20 Affirmed in part and vacated in part.