

NOTICE
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2014 IL App (4th) 140239-U

NO. 4-14-0239

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 4, 2014
Carla Bender
4th District Appellate
Court, IL

In re: M.J., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 13JA58
STEVEN A. JOHNSON,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Harris and Holder White **concurred** in the judgment.

ORDER

¶ 1 *Held:* The trial court's dispositional order removing custody of the minor from respondent father was not an abuse of discretion.

¶ 2 In March 2014, the trial court adjudicated M.J. (born March 8, 2013) neglected.

The court then removed custody and guardianship from her father, respondent, Steven A.

Johnson, and placed it with the Department of Children and Family Services (DCFS).

Respondent appeals, arguing the court erred in removing M.J. from his custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 15, 2013, the State filed a four-count petition for adjudication of wardship against respondent and M.J.'s mother, Madalynn J. Lee, alleging M.J. was (1) abused where her parents created a substantial risk of physical injury (count I); and (2) neglected where

her environment exposed her to (a) domestic violence (count II), (b) physical harm (count III), and (c) substance abuse (count IV). (We note M.J.'s mother is not a party to this appeal.)

¶ 5 During the February 12, 2014, adjudicatory hearing, both respondent and Madalynn stipulated to count II. A Champaign County sheriff's report was offered into evidence as the factual basis for the stipulation. According to the report, on October 2, 2013, police responded to a domestic-violence incident involving M.J.'s parents. Madalynn threw a spatula at respondent. It missed him, struck M.J., and cut her forehead. Madalynn was arrested for domestic battery.

¶ 6 During the call, police observed a marijuana-smoking device in plain view on a television stand. Respondent admitted smoking marijuana several days a week to self-medicate his depression. Respondent told police he did not have marijuana in the apartment because he was out of money, but he did have several smoking devices. Respondent told police where the paraphernalia was located and gave his consent to search the apartment. Police recovered 11 smoking or smoking-related items, most of which were located on the floor of the apartment. All of the items contained residue. Police issued respondent a notice to appear for possession of drug paraphernalia.

¶ 7 Respondent had no objection to the use of the police report for the factual basis. The trial court accepted the stipulation, entered a finding of neglect as to count II, and dismissed counts I, III, and IV. The court then set the matter for a March 12, 2014, dispositional hearing.

¶ 8 On March 7, 2014, the Center for Youth and Family Solutions filed a dispositional report. According to the report, M.J.'s mother threw a spatula at respondent, hitting M.J. in the head and causing a cut in her forehead. During the call, police observed drug paraphernalia and

marijuana throughout the apartment. Police observed cleaning tools, pipes, and other drug paraphernalia on the floor, "to which [M.J.] had access." Respondent admitted smoking marijuana daily to deal with his depression. Respondent was primarily responsible for M.J.'s care as a result of her mother's employment schedule and his unemployment.

¶ 9 The report also indicated respondent had a history of mental-health issues. Respondent reported being diagnosed with major depression, post-traumatic stress disorder, and major anxiety. While respondent was not currently on any medications to regulate these conditions, he reported previously taking trazodone hydrochloride, Prozac, Zoloft, Paxil, and Depakote. Respondent also reported having verbal altercations with M.J.'s mother, which often escalated into physical ones. The report recommended M.J.'s guardianship be placed with DCFS but that custody remain with respondent and Madalynn.

¶ 10 During the March 12, 2014, dispositional hearing, the trial court accepted the dispositional report without objection by respondent. The State requested M.J. be made a ward of the court but that custody remain with both parents. The guardian *ad litem*'s recommendation mirrored the State's position. Respondent did not present any evidence on his behalf.

¶ 11 The trial court disagreed with the parties' recommendations. In its order, the court stated it considered the dispositional report, the evidence and stipulations from all the hearings, the permanency goal, the nature of the service plan, the recommendations of the parties, as well as the requisite statutory factors. The court found respondent "unfit and unable for reasons other than financial circumstances alone, to care for, protect, train or discipline [M.J.] and the health, safety and best interest of [M.J.] will be jeopardized if [she] remains in [respondent's] custody." The court based its finding on respondent's history of domestic violence with M.J.'s mother, his

history of psychological issues, and his failure to engage in services at Prairie Center or Cognition Works. The court adjudicated M.J. neglected, made her a ward of the court, and found it was in her best interest to place her custody and guardianship with DCF.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, respondent argues the trial court erred in removing M.J. from his custody. We disagree.

¶ 15 The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1. (West 2012)) provides a two-step process for determining whether a minor should be removed from the parents' custody and made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. Initially, the trial court must conduct an adjudicatory hearing to determine whether the minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336 (quoting 705 ILCS 405/2-18(1) (West 2010)). A neglected minor includes "any minor under 18 years of age whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2012). Here, the trial court adjudicated M.J. neglected after respondent stipulated to count II, *i.e.*, M.J.'s environment was injurious to her welfare. We note respondent does not challenge the trial court's neglect adjudication.

¶ 16 After a minor is found neglected, the second step in removal proceedings is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336 (citing 705 ILCS 405/2-21(2) (West 2010)). "At the dispositional hearing, the trial court determines whether it is consistent with the health, safety and best interests of the minor and the public that the minor be made a ward of the court." *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336. If the minor "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). "The court's decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). "[A]n abuse of discretion occurs only where no reasonable person would take the view adopted by the court." *In re Marriage of DeRossett*, 173 Ill.2d 416, 422, 671 N.E.2d 654, 657 (1996). We note respondent clarifies in his reply brief he is not arguing the court's factual findings were against the manifest weight of the evidence. Instead, respondent contends only that the court's decision to remove M.J. from his custody was an abuse of its discretion.

¶ 17 Pursuant to the Act, the trial court may enter the following dispositional orders:

"A minor under 18 years of age found to be neglected *** may be (1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [of the Act]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act." 705 ILCS 405/2-23(1)(a) (West 2012).

Section 2-27 of the Act provides the court may place custody and guardianship of the minor with DCFS upon a determination that "the parents *** of a minor adjudged a ward of the court 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 (West 2012).

¶ 18 In this case, M.J. was being exposed to domestic violence and daily drug use in the home. The couple's verbal arguments often escalated into physical altercations. M.J. was injured as a result of one of these altercations. Respondent also had untreated mental-health issues and, at the time of the dispositional hearing, had not yet engaged in services. Moreover, respondent, who was primarily responsible for M.J.'s care, admitted using marijuana regularly to cope with depression. Respondent's many smoking devices, all of which contained residue, were found in various locations throughout the apartment. Almost all of these items were found on the living room floor, and thus within then eight-month-old M.J.'s reach.

¶ 19 Under these circumstances, it was not an unreasonable use of the trial court's discretion to choose a dispositional order which would remove M.J. from the home. Considering the evidence before the court at the time of the dispositional hearing, including the fact respondent had not begun services, the court's order finding it was in M.J.'s best interest to remove her from respondent's custody was not an abuse of discretion.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the trial court's judgment.

¶ 22 Affirmed.