

NOTICE

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2014 IL App (4th) 140606-U

NO. 4-14-0606

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 30, 2014

Carla Bender

4th District Appellate

Court, IL

In re: D.H. and J.H., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Plaintiff-Appellee,)	Champaign County
v.)	No. 14JA5
JESSICA WRIGHT,)	
Defendant-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order removing custody of the minors from respondent mother was not against the manifest weight of the evidence nor an abuse of discretion.

¶ 2 In June 2014, the trial court found the minors, D.H. (born July 15, 2000) and J.H. (born July 9, 2001), to be neglected and, following a dispositional hearing, placed the minors in the custody of the Illinois Department of Children and Family Services (DCFS). Respondent, Jessica Wright, appeals, arguing the court abused its discretion in removing the minors from her custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 17, 2014, the State filed a two-count petition for adjudication of wardship, alleging the minors' environment was injurious to their welfare when residing with

their mother, respondent, because they were exposed to domestic violence and the risk of physical harm. 705 ILCS 405/2-3(1)(b) (West 2013). (The minors' father, who apparently lives in Joliet, was defaulted and is not a party to this appeal.) At the adjudicatory hearing on June 2, 2014, the following evidence was adduced.

¶ 5 On November 10, 2013, at 2:45 a.m., Champaign police officer Brian Rogers was dispatched to respondent's residence following a report of domestic battery. Respondent, her children, and her live-in boyfriend, Corey Lipscomb, lived in the house. Respondent told Rogers she and Lipscomb had an argument and Lipscomb pushed her down and choked her. During the altercation, her 17-year-old son, J.G., pulled Lipscomb off her. J.G. and Lipscomb began fighting and Lipscomb grabbed an ax and threatened to kill J.G. with it. Lipscomb chased J.G. with the ax, swinging the ax at J.G. The minors reported seeing Lipscomb choking their mother and chasing J.G. with the ax. They appeared upset and were crying. Lipscomb was not located that night.

¶ 6 On November 14, 2013, Officer Marshall Henry, who was familiar with Lipscomb from prior contacts, spotted Lipscomb driving a car. Respondent was in the car with him. Henry was aware of the November 10 incident and arrested Lipscomb.

¶ 7 Sheree Foley investigated the November 10 incident for DCFS. She met with the minors, who recounted what had happened. She met with respondent, who recounted the incident and told Foley she met Lipscomb through the Internet. Respondent was not sure she wanted services or an order of protection and told Foley she would not allow Lipscomb back in the house because she was fearful for her children. Foley testified Lipscomb was back living in respondent's home. She also testified respondent later recanted her original statements about

Lipscomb choking her and chasing J.G. with an ax.

¶ 8 At the adjudicatory hearing, respondent denied any physical altercation with Lipscomb occurred. She denied seeing Lipscomb chase J.G. with an ax. She and J.G. went to the State's Attorney's office and signed affidavits recanting their statements to the police. Lipscomb was living with her and the minors as of the date of the hearing.

¶ 9 At the close of the evidence, the trial court found the State had proved both counts of neglect by clear and convincing evidence. The court then heard evidence respondent was engaging in domestic-violence counseling, although she continued to deny any domestic violence had occurred. Lipscomb had declined to engage in domestic-violence counseling. The court suggested respondent consult with her lawyer about how Lipscomb's reluctance to engage in services might affect the dispositional hearing "because you may be at a point in your life where you have to make a choice about him or your children and your lawyer will give you advice about this."

¶ 10 A dispositional hearing was held on June 27, 2014. The trial court considered a dispositional report filed June 19, 2014. In addition, respondent testified she had turned the minors over to their father, who resided in Joliet, Illinois. He picked up D.H. the day prior to the dispositional hearing. She stated she did not know his address.

¶ 11 The dispositional report indicated respondent is 35 years old and the mother of six children between the ages of 12 and 19. The report reflected Lipscomb pleaded guilty to battery/strangulation as a result of the November 10, 2013, incident. It also reflected multiple arrests beginning in 1993 and Lipscomb admitted doing "county time" and having been placed on probation. Lipscomb had not engaged in domestic-violence counseling. While the children

were bonded with respondent, the report recommended the trial court place custody and guardianship with DCFS.

¶ 12 The trial court found it in the minors' best interests to be adjudged wards of the court and placed custody and guardianship with DCFS. The court ordered all visitation to be supervised.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent challenges only the dispositional order, claiming it was error to remove the minors from the home of respondent and Lipscomb. We disagree.

¶ 16 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 parent's 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 the minors neglected after hearing evidence their environment was injurious to their welfare. We note respondent does not challenge the trial court's neglect adjudication.

¶ 17 After a minor is found neglected, the second step in the 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).

¶ 18 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).

¶ 19 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).

¶ 20 In this case, respondent's paramour assaulted her son with an ax and choked her. Her son intervened on her behalf to protect her from Lipscomb, something no child should ever have to do. Despite the trial court's warning to respondent following the adjudicatory hearing she may have to choose between Lipscomb and her children, she chose Lipscomb. Lipscomb refused to engage in domestic-violence counseling. Respondent was entrenched in her denial of any domestic violence in her relationship with Lipscomb and her denial Lipscomb chased J.G. with an ax. Indeed, only four days following the harrowing ax incident, respondent was found in a car with Lipscomb. This was after she told investigator Foley that Lipscomb would not be allowed back in her home. Her conduct showed she would not likely protect the safety of her children in the future. Thus, the manifest weight of the evidence supported the court's finding respondent was unfit. Because respondent could not be counted on to protect her children, the trial judge did not abuse his discretion by placing custody and guardianship with DCFS.

¶ 21 III. CONCLUSION

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

¶ 23 Affirmed.