

Nos. 1-12-0118, 1-12-0199 (Consolidated)

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> SELENA C., a Minor,)	APPEAL FROM THE
Respondent-Appellee)	CIRCUIT COURT OF
)	COOK COUNTY
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
)	
v.)	No. 05 JA 958
)	
Ronald C.,)	
Respondent-Appellant,)	
)	
and)	
)	HONORABLE
Shelly C.,)	ROBERT BALANOFF,
Respondent-Appellant).)	JUDGE PRESIDING.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

¶ 1 **HELD:** The circuit court of Cook County's decision vacating a Department of Children and Family Services' guardianship of a minor and establishing the minor's adult sister as the minor's guardian was not against the manifest weight of the evidence. The circuit court's entry of the order appointing the sister as the minor's guardian

without requiring periodic reports from the guardian was not an abuse of the court's discretion. The judgment of the circuit court is affirmed.

¶ 2 In these consolidated cases, respondents Ronald and Shelly C., the biological parents of minor respondent Selena C., appeal an order of the circuit court of Cook County vacating the Department of Children and Family Services (DCFS) guardianship of Selena and establishing the guardianship of Selena in Sade C., Selena's adult sister. The parents argue Sade is not a suitable guardian and the guardianship is not in Selena's best interests. For the following reasons, we reject the parents' arguments and affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Selena was born on October 4, 2000. Ronald and Shelly C. have been married throughout the duration of Selena's case.

¶ 5 On September 19, 2005, the State filed a petition for an adjudication of wardship, alleging Selena was abused and neglected due to Shelly's substance abuse. On that date, the trial court held a temporary custody hearing. Although the parents were not present in court, the public guardian and the public defender submitted a stipulation of facts and the circuit court granted the DCFS temporary custody of Selena without prejudice.

¶ 6 On September 27, 2005, the circuit court held another hearing on temporary custody. Ronald appeared and had counsel appointed to represent him. Shelly was not present. The circuit court found probable cause to believe Selena was abused and neglected, and an urgent need to remove her from her parents' care existed. The circuit court awarded the DCFS

administrator temporary guardianship of Selena, with authority to determine where Selena would be placed.

¶ 7 On July 19, 2006, following a hearing, the circuit court entered an order adjudicating Selena as neglected due to lack of care and an injurious environment. The adjudicatory order found that Ronald and Shelly had eight other minors who had been or were currently in DCFS custody. The order also found that on September 15, 2005, Shelly was transported to the hospital after falling in the street due to intoxication. The order further states that Shelly admitted to intoxication from alcohol and illegal substances. According to the order, Shelly admitted being unable to care for Selena. In addition, the order states that Ronald was unavailable to care for Selena.

¶ 8 On the same date, the circuit court held a dispositional hearing to determine whether the parents were fit, willing and able to care for Selena. The court entered an order finding the parents were unable to care for Selena, making Selena a ward of the court, and appointing the DCFS administrator as Selena's guardian.

¶ 9 In addition, the circuit court proceeded to hold Selena's first permanency hearing. After reviewing the most recent service plan, the circuit court found that Shelly had not made substantial progress toward returning Selena home, but that Ronald had made some progress. The circuit court entered an order setting a permanency goal of returning Selena home within 12 months.

¶ 10 On January 17, 2007, the circuit court held a second permanency hearing. The September 2006 service plan rated the parents' progress as unsatisfactory. Ronald had submitted only two of

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the requested random urine drops, both of which tested positive for cocaine. Ronald completed a parenting class, but only visited Selena nine times in the prior six months. Shelly's whereabouts were unknown until May 2006, and she was incarcerated until September 11, 2006. The initial date of her incarceration was not reported. The circuit court found Ronald had not made substantial progress toward returning Selena home, but that Shelly had made some progress because she was engaged in services, while Ronald was not. The circuit court entered an order continuing a permanency goal of returning Selena home within 12 months.

¶ 11 On November 7, 2007, the circuit court held a third permanency hearing. The corresponding service plan rated the parents' overall progress as satisfactory. Shelly was engaged with recommended services, except individual counseling, until she was arrested in September 2007. Ronald had not complied with random urine drops or substance abuse treatment, but had recently engaged in outpatient substance abuse treatment. The circuit court found both parents made some progress toward returning Selena home and entered an order continuing a permanency goal of returning Selena home within 12 months.

¶ 12 On July 3, 2008, the circuit court held a fourth permanency hearing. The circuit court again found both parents made some progress toward returning Selena home and entered an order continuing a permanency goal of returning Selena home within 12 months. Approximately a month later, Shelly was arrested and incarcerated until January 2009. An August 2008 report indicated Ronald continued to minimize his substance abuse, failed to attend appointments for outpatient treatment, and failed to submit to toxicology screenings.

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¶ 13 On January 7, 2009, the circuit court held a fifth permanency hearing. The circuit court found both parents failed to make substantial progress toward returning Selena home and neither parent was engaged in reunification services. Nevertheless, the court entered an order continuing a permanency goal of returning Selena home within 12 months.

¶ 14 On July 29, 2009, the circuit court held a sixth permanency hearing. The court found Shelly had made some progress and made no finding specific to Ronald, but found both parents were engaged in services and visitation with Selena. The court entered an order continuing a permanency goal of returning Selena home within 12 months.

¶ 15 That same day, Ronald submitted to a toxicology screening and tested positive for opiates. The prior month, Shelly tested positive for amphetamines.

¶ 16 On February 18, 2010, caseworker Melissa Rodriguez and her supervisor, Lilia Reyes, filed a report with the court recommending that Selena's permanency goal change from a return home to a private guardianship. The report noted that Selena had been in five foster homes since the inception of her case. The report also noted that Ronald continued to test positive for cocaine, while Shelly's repeated incarcerations prevented her from completing required services. The report further recounted a January 2010 incident in which Selena reported that Ronald had asked her to "pee in a cup for him" and also to "pee in his medicine bottle for his drop."

¶ 17 On February 18, 2010, following a seventh permanency hearing, the circuit court entered a permanency order stating the appropriate permanency goal was a private guardianship. The order found the parents had not made the requisite progress for a return home and Selena's relative was willing to provide permanency for Selena.

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¶ 18 On June 28, 2010, the circuit court granted a DCFS motion allowing Selena to continue to live with her adult sister, Sade, in Indiana.

¶ 19 The circuit court held further permanency hearings on August 19, 2010, February 9, 2011, and August 19, 2011. The court's orders found, respectively: (1) Sade wished to be Selena's guardian; (2) Selena was thriving and happy in her relative foster home; and (3) the parents were not engaged in reunification services.

¶ 20 On November 11, 2011, DCFS filed a motion to vacate the guardianship, terminate wardship, and close Selena's case. DCFS alleged: (1) Selena and Sade had a strong attachment to each other; (2) Sade was fully qualified to be Selena's guardian and a background check showed no felony convictions; and (3) adoption was not a permanency option because Sade did not wish to alter family relationships. At the same time, DCFS filed a petition to appoint Sade as Selena's guardian.

¶ 21 The circuit court heard DCFS's motion on December 28, 2011. Dominique Cochran, the caseworker for Selena's case since March 2011, testified she last saw Selena in her home in November and found the home to be safe and without risk of abuse or neglect. Cochran stated that an Indiana caseworker who visited the foster home every 30 days and visited Selena at school provided written reports to Cochran. The reports stated that the foster home was safe and appropriate. Cochran added that Selena was doing "pretty good" in school, earning Bs and Cs, and had a math tutor as a precautionary measure. In addition, Cochran stated that Selena took psychiatric medication and was monitored monthly by a psychiatrist. Cochran opined that Selena

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was bonded with Sade. Cochran also stated that she and her supervisor were happy with the way Sade was raising Selena.

¶ 22 Cochran testified that Ronald and Shelly remained in a relationship and now lived in Indiana. Visits between Selena and her parents have always been supervised. Cochran noted Ronald's visits were inconsistent, with the last visit occurring on Christmas, according to information Cochran received from Sade. Cochran also testified that Sade expressed concern about supervising visits with Ronald when he had become "belligerent." Cochran further testified that the parents had provided no documentation to show they were engaged in services. Cochran added that all of the parents' nine children, except Selena, had been adopted by family members.

¶ 23 Moreover, Cochran testified that she did not know of any disagreements between Sade and her male friend, Jerome Dixon. Cochran stated that Jerome had contact with Selena, but Jerome did not live in the foster home. Cochran did not complete a background check on Jerome, although it would be the best practice to do so. According to Cochran, Jerome did not want to be involved in the DCFS evaluation because he believed the case was between Sade and her parents.

¶ 24 Cochran stated that Sade has sickle cell anemia and that she knew Sade was pregnant and due to give birth in February 2012. According to Cochran, Sade was airlifted to a hospital in November 2011, at which time Selena's grandmother went to Sade's home and cared for Selena. Cochran acknowledged that Sade had once told Cochran she was not pregnant when she was pregnant, but stated that Sade was unsure how she would handle the pregnancy at that time.

¶ 25 Cochran testified that after discussing the case with her supervisor, she recommended the court grant Sade guardianship of Selena. Cochran opined it would be in Selena's best interest because Selena and Sade have a positive relationship and things have been safe and appropriate since Selena moved in with Sade.

¶ 26 Sade testified that she wished to be Selena's guardianship and understood she would be responsible for Selena's clothing, housing and medical care. Sade stated that Selena was diagnosed with attention deficit hyperactivity disorder (ADHD), but took medication and saw a psychiatrist monthly. According to Sade, Selena's medical and dental appointments were up-to-date and she had no health problems.

¶ 27 Sade also testified that she was enrolled part-time at Purdue University and was a year from completing a bachelor's degree in computer information technology. Sade received financial aid and grants from school to help support Selena. Sade also received social security income due to her sickle cell anemia diagnosis. Sade added her aunt, grandmother and Jerome assisted her financially at times.

¶ 28 Sade further testified she understood her responsibility to offer visitation to Ronald and Shelly and was willing to do so as long as the visits were safe and appropriate for Selena. She described the relationship between Ronald and Selena as "on and off" and "good and bad." Sade explained that Ronald was sometimes unable to have visits with Selena due to arguments with Sade and sometimes unable to visit due to his work schedule. On occasion, Sade terminated visits from Ronald because she believed he was intoxicated, based on the smell of alcohol and

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Sade's lifelong relationship with Ronald. Sade stated Shelly rarely visited and had visited separately from Ronald approximately twice.

¶ 29 Sade testified her sickle cell anemia did not affect her ability to meet Selena's needs. Although her pregnancy was considered high-risk, Sade stated she did not require bed rest and did not need to take any precautions that would affect Selena.

¶ 30 Sade further testified Jerome lived in Chicago. Sade said Jerome came to her home "every blue moon," perhaps twice in total. According to Sade, Ronald met Jerome once when Jerome was in Indiana.

¶ 31 Ronald testified he had concerns about Jerome. Ronald stated he and Jerome worked at the same company in Indiana. Ronald believed Jerome lived with Sade because Jerome was with her when she moved into her current home and put his name on the lease. Ronald claimed his daughter (he did not specify which one) stopped attending school when Jerome showed up. Ronald also claimed Jerome was affiliated with gangs and raised pit bulls. Ronald stated Jerome wore his pants down to his knees around Ronald's daughters. Ronald declared he was trying to teach his daughters values.

¶ 32 Ronald denied going to Sade's home while intoxicated. He also claimed he gave Sade money, although he had no receipts for these gifts.

¶ 33 Ronald stated that Indiana Child Protective Services told him it would do a home study for him and Shelly, conduct random urine drops, and help them with Selena. Roland added he was not receiving visitation with Selena because he did not like Jerome. Roland testified he

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raised his eight other children. When asked whether the other children had all been adopted, Roland guessed they had been. He did not recall being found unfit regarding those children.

¶ 34 Jerome testified that he resided in Chicago. Jerome denied his name was on Sade's lease, but admitted he helped her move and was present when Sade signed the lease. Jerome stated that he saw Sade nearly every day after work and when he took her for doctor's visits. Jerome also testified he worked 9 to 10 hours daily in Indiana and commuted from Chicago. Jerome added that he had been working in Indiana for two or three months at the time of the hearing and had been seeing Sade and Selena within that time period.

¶ 35 Shelly testified that she and Ronald moved to Indiana in March 2011 to help care for Selena if Sade needed to be hospitalized. Shelly claimed Sade had to be hospitalized on seven or eight occasions. Indeed, Shelly claimed Selena and Jerome slept at the hospital during one hospitalization "around in September sometime."

¶ 36 Shelly also testified that she completed an intensive outpatient substance abuse program and received a certificate of completion in September 2010. She also received a certificate for completing a Treatment Alternatives for Safe Communities Offender Re-entry Program in October 2010. Shelly stated she had been attending Narcotics Anonymous/Alcoholics Anonymous meetings and submitted a log containing notes from July 2010 through December 2011. Shelly acknowledged she was on the third step of a 12-step program and that some people remain on the third step for years.

¶ 37 Shelly further testified she was receiving individual therapy and psychiatric services since the prior May, although she was unsure of the exact date. Shelly stated she only took medication

for depression. She claimed she was unaware that she had been also diagnosed with schizoaffective disorder. Shelly missed six of nine scheduled therapy appointments and one of four psychiatric appointments. Shelly stated she missed appointments because her Medicaid had not been transferred to Indiana and she was unable to reach anyone at Medicaid since she moved.

¶ 38 Moreover, Shelly testified she had been clean for nearly two years and was willing to submit to random urine screenings. Shelly submitted a letter from Indiana Child Protective Services, dated December 21, 2011, regarding the parents' expression of willingness to undergo random drug screens and have a home study conducted.

¶ 39 Shelly stated she spoke to Selena almost daily by telephone. Shelly claimed she had not seen Selena between October 2011 and Christmas because Sade would not let her. Shelly added that Selena once said she would like to stay with Ronald and Shelly and did not want to go home that day.

¶ 40 At the conclusion of the testimony, Ronald's counsel raised the issue of whether the trial judge would speak to Selena. The trial judge indicated it would be unnecessary. Ronald's counsel also suggested that some credibility issues were raised during the hearing. The trial judge responded that he did not "have any credibility issues of the witnesses." Ronald's counsel further requested the case be referred for mediation. The trial judge declined the request and ruled that guardianship of Selena would be transferred from DCFS to Sade. The trial judge reasoned that Selena needed permanency and the parents had failed for six years to move the process along from receiving services to supervised visits to unsupervised visits before a return home. The trial judge was also concerned about the report that Ronald had asked Selena to

provide urine for his tests. The trial judge also found that Sade was bonded with her sister and that the placement was safe and appropriate.

¶ 41 Accordingly, on December 28, 2011 (the same date as the hearing), the trial court entered an order vacating the guardianship of the DCFS administrator and establishing the guardianship of Selena in Sade. On January 6, 2012, Ronald filed a timely notice of appeal to this court. On January 17, 2012, Shelly filed her timely notice of appeal. On February 10, 2012, this court consolidated the appeals.

¶ 42 DISCUSSION

¶ 43 In these consolidated appeals, Ronald and Shelly assert the trial court erred in establishing the guardianship of Selena in Sade, contending that Sade is not a suitable guardian and that DCFS failed to prove the guardianship is in Selena's best interests. In all guardianship and custody cases, " 'the issue that singly must be decided is the best interest of the child.' " *In re Austin W.*, 214 Ill. 2d 31, 47 (2005) (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991)). The legislature has identified various factors that help inform this decision in section 1–3(4.05) of the Juvenile Court Act (705 ILCS 405/1–3(4.05) (West 2010)), which provides:

"Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

- (a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
- (b) the development of the child's identity;
- (c) the child's background and ties, including familial, cultural, and religious;

- (d) the child's sense of attachments, including:
 - (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
 - (ii) the child's sense of security;
 - (iii) the child's sense of familiarity;
 - (iv) continuity of affection for the child;
 - (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child."

In addition, section 11-3(a) of the Probate Act of 1975 (755 ILCS 5/11-3(a) (West 2010)) provides:

"A person is qualified to act as guardian of the person and as guardian of the estate if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the minor and that the proposed guardian:

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- (1) has attained the age of 18 years;
- (2) is a resident of the United States;
- (3) is not of unsound mind;
- (4) is not an adjudged disabled person as defined in this Act; and
- (5) has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the minor's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a child, including a felony sexual offense."

"Other important considerations when deciding a child's best interests are 'the nature and length of the child's relationship with the present caretaker' and the effect that a change of placement would have upon the emotional and psychological well-being of the child." *Austin W.*, 214 Ill. 2d at 50 (quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 534 (1991)).

¶ 44 It was incumbent upon the trial court to find by a preponderance of the evidence that placing Selena in the custody and guardianship of Sade was in Selena's best interests, which is reviewed under the manifest weight of the evidence standard. *Austin W.*, 214 Ill. 2d at 51-52. Once the initial finding of abuse or neglect has been entered by the trial court, it is proper and consistent with the purpose of the Juvenile Court Act that the court have broad authority and wide discretion to modify guardianship orders in a manner that serves the best interests of the minor. See *In re Terrell L.*, 368 Ill. App. 3d 1041, 1046 (2006). The court's determination of the

minor's best interest lies within its sound discretion, especially when it considers the credibility of testimony presented at the best interests hearing; that determination will not be reversed unless it is against the manifest weight of the evidence or the trial court has abused its discretion. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 106. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence. *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008).

¶ 45 In this case, Ronald and Shelly focus on the supposed inconsistencies in the testimony regarding the relationship between Sade and Jerome. Indeed, Shelly suggests Sade committed perjury in this case. However, inconsistencies in testimony cannot be equated with perjury. *People v. Craig*, 334 Ill. App. 3d 426, 439 (2002). Moreover, the inconsistencies the parents identify here are not necessarily irreconcilable. For example, Jerome's testimony that he saw Sade every day after work is not directly contradicted by Sade's testimony that he had been in her home only a few times, as Jerome may see Sade outside her home. Additionally, Sade's testimony that Jerome did not work in Indiana and that Ronald only knew him through her may be based on simply mistaken information, rather than an intentional lie. Cochran acknowledged that Sade had once told Cochran she was not pregnant when indeed she was, but explained that Sade was unsure what she was going to do about her pregnancy at that time. Cochran nevertheless opined it would be in Selena's best interest because Selena and Sade had a positive relationship and things had been safe and appropriate since Selena moved in with Sade.

¶ 46 At the conclusion of the testimony in this case, the trial judge flatly rejected the suggestion by Ronald's counsel that the parents had raised credibility issues in this case. The ruling fell within the discretion of the trial judge, who observed the witnesses and their demeanor during their testimony. *Shauntae P.*, 2012 IL App (1st) 112280, ¶ 106. The trial judge reasoned that Selena needed permanency and noted the parents had failed for six years to move the process along from receiving services to supervised visits to unsupervised visits before a return home. This court has affirmed similar decisions in prior guardianship cases. See *Tasha L.-I.*, 383 Ill. App. 3d at 53; *In re V.M.*, 352 Ill. App. 3d 391, 398 (2004). The trial judge also found that Sade was bonded with her sister and that the placement was safe and appropriate. Given the testimony regarding the home visits, as well as Selena's psychiatric and medical treatment and educational progress, we cannot conclude the trial judge's findings are unreasonable, arbitrary, and not based upon any of the evidence. Accordingly, we conclude the trial court's decision was not against the manifest weight of the evidence.

¶ 47 In the alternative, Ronald and Shelly argue that the trial court should have required Sade to report periodically to the court on her actions on Selena's behalf, pursuant to section 2-28(1) of the Juvenile Court Act (705 ILCS 405/2-28(1) (West 2010)). We note in passing that Ronald and Shelly fail to identify in the record where either of them sought periodic reporting in the trial court. Nevertheless, section 2-28 of the Juvenile Court Act states that the trial court "may" require such reports. 705 ILCS 405/2-28(1) (West 2010). The decision to order (or not order) periodic reporting rests within the discretion of the trial court, and will be reversed only where the trial court has abused that discretion. See *In re F.B.*, 206 Ill. App. 3d 140, 153 (1990). An

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abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 48 In this case, Ronald and Shelly reiterate their concerns regarding Sade's relationship with Jerome, arguing the inconsistencies in their testimony shows they had something to hide. The record in this case shows the trial judge rejected the parents' claim that these inconsistencies raised serious issues regarding the placement of Selena with Sade. Having concluded the trial judge's findings are not against the manifest weight of the evidence, we cannot conclude the trial court's decision not to require periodic reporting from Sade on the status of the guardianship was arbitrary, fanciful, or unreasonable. Thus, we conclude that the trial judge did not abuse his discretion in his ruling.

¶ 49 CONCLUSION

¶ 50 In sum, we conclude the trial court's decision to vacate the guardianship of the DCFS administrator and establish the guardianship of Selena with Sade was not against the manifest weight of the evidence. Additionally, the trial judge's entry of the order appointing Sade as Selena's guardian without requiring periodic reports from Sade was not an abuse of discretion. Accordingly, for all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 51 Affirmed.