2014 IL App (1st) 132309-U

FIFTH DIVISION
JANUARY 24, 2014

No. 1-13-2309

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re DANIEL P., a Minor	)	
	)	Appeal from the
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 11 JA 1001
	)	
Heydi P.,	)	Honorable
Respondent-Appellant	)	Maxwell Griffin, Jr.,
	)	Judge Presiding.
The Illinois Department of Children and Family Services,	)	
Intervenor-Appellee).	)	
	)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: The juvenile court's finding that the Ada S. McKinley agency had made reasonable efforts to reunite the minor child with his parents was not against the manifest weight of the evidence, as there was sufficient evidence to demonstrate the agency's efforts to reunite the mother with her child.

¶ 2 Respondent Heydi P. appeals from the juvenile court's June 6, 2013, entry of a modified disposition order and order of protection, in which the court returned respondent's two-year-old

son (the child) to the care and custody of his father, Ezekiel B. (the father), after a finding that Ada S. McKinley had provided reasonable efforts to reunite the child with his parents. On appeal, respondent challenges not the court's finding that she was unable to care for her child or the court's finding that the father was able to care for the child, but only challenges the court's finding that the agency had made reasonable efforts in reuniting her with her child. Respondent claims that the juvenile court's decision was against the manifest weight of the evidence because the agency did not adequately accommodate respondent's hearing disability. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 Prior to reciting the history of the instant case, a few preliminary background items are helpful to clarify the parties and their relationships. Respondent and the father are the parents of the child, born on February 19, 2011. Both respondent and the father live with their parents, as they are quite young; respondent was 19 and completing high school as of the date of the dispositional hearing and, while the father's age is not disclosed in the record, however, he was a minor at the time that the child was taken into Department of Children and Family Services (DCFS) custody. The father is currently enlisted in the Army reserves, a position which resulted in his missing several of the court dates due to boot camp and other mandatory training.

¶ 5 Respondent lives with her mother and younger sister in a two-flat apartment building owned by her mother. The father lives two to three blocks away in a home with his parents and two siblings. After a different relative placement, the father's parents were named as the child's foster parents in March 2012. Thus, the child and the father both reside in the home of the

father's parents. While normally, a parent would not live in the foster home with his child, an exception was made in the case at bar because the father was a minor and did not pose a risk to the child.

¶ 6 On December 22, 2011, the State filed a petition for adjudication of wardship, asking for the child to be adjudicated a ward of the court; the State also filed a motion for temporary custody the same day.[1] The adjudication petition claimed[2] that the child was abused or neglected: (1) in that he was "not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for his well-being, ***, including adequate food, clothing or shelter"; (2) in that his "environment [was] injurious to his welfare"; and (3) in that his parent or other responsible individual "[c]reate[d] a substantial risk of physical injury to such minor by other than accidental means which would be likely to cause death, disfigurement, impairment or emotional health, or loss or impairment of any bodily function."

¶ 7 The facts underlying all three claims were the same. The child suffered from a medical skin condition known as atopic dermatitis[3], which was untreated by respondent and respondent's

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[1] A second petition for adjudication of wardship, for respondent's younger sister, was also filed. Additionally, respondent's mother was named a responsible relative in the child's case. As they are not relevant to the case at bar, we do not recite the facts relating to proceedings involving either respondent's mother or sister unless necessary.

[2] The second page of the petition appears to be missing from the record on appeal.

[3] Atopic dermatitis is also referred to as eczema. *Atopic Dermatitis*, Medline Plus, http://www.nlm.nih.gov/medlineplus/ency/article/000853.htm, Alternative Names (last updated Nov. 20, 2012).

mother. Due to the lack of treatment, in November 2011, the child suffered from "open wounds oozing pus and blood as well as a scaly rash covering his abdomen and back," which medical personnel stated would not have occurred with proper and regular treatment for his condition. The child was also diagnosed with torticollis,[4] which required routine physical therapy and at-home exercises. However, respondent and respondent's mother failed to follow through with the recommended medical treatment. On December 6, 2011, the home of respondent and respondent's mother "was observed to be filthy to the point of uninhabitable, including a strong urine odor from the animals in the home, no bed or mattresses, rooms filled with debris and other rubbish preventing movement, no hot water, [and] stagnant water in the basement leading to mold and even to the growth of mushrooms." The child's father was unknown at the time.

¶ 8 Based on these facts, on December 22, 2011, the juvenile court found probable cause that the child was abused or neglected and that immediate and urgent necessity existed to support the removal of the child from the home. The court granted temporary custody to D. Jean Ortega-Piron, DCFS Guardian Administrator, with the right to place the child, and ordered respondent's visitation limited to supervised day visits.

¶ 9 On December 30, 2011, the juvenile court entered an order amending the identifying information on the adjudication petition to add the father's information and entered another temporary custody order. This time, the father had received notice and was present. The court again found probable cause that the child was neglected and that immediate and urgent necessity

[4] Torticollis is "a twisted neck in which the head is tipped to one side, while the chin is turned to the other." *Torticollis*, Medline Plus, http://www.nlm.nih.gov/medlineplus/ency/article/000749.htm (last updated May 21, 2012).

existed to support the removal of the child from the home, and also found that reasonable efforts had been made but had not eliminated the immediate and urgent necessity to remove the child from the home. The court ordered the child removed from the home and granted temporary custody to the DCFS Guardian Administrator with the right to place the child.

¶ 10 I. Adjudication of Wardship

¶ 11 On March 14, 2012, the parties stipulated to the following facts. The child was born on February 9, 2011, to respondent and the father; the father was non-custodial for the relevant time period.

¶ 12 The parties also stipulated that DCFS' Department of Child Protection (DCP) investigator Sharon Dorfman would testify that she was assigned to the child's case, which came to her attention due to a hotline report made on December 5, 2011, that alleged that the child was suffering from an untreated skin condition. On December 6, 2011, Dorfman went to the home of respondent's mother to observe the child; the investigator observed blood on the child's left shoulder. The building consisted of two apartments, an upstairs and a downstairs unit. The stairs leading to the upstairs unit were impassable, blocked by what the investigator considered debris, consisting of various items in boxes and bags. There was a "strong odor" of cat urine, immediately noticeable upon entering the first floor unit; the first floor unit consisted of a front living room, two bedrooms, a kitchen, and a bathroom. The living room was cluttered with what the investigator considered debris piled approximately three feet high, which appeared to include "cloths, papers, carry out food cartons and other unknown items" and contained "a couch, a reclining chair, a table, a pack'n'play play pen and an infant bouncy chair." The living room

couch was "loaded with cloths, blankets, and other items," and the table was piled with various items. The play pen was full of various items, including an infant walker stacked on top. Movement in the home was impossible but for a path that was less than one foot wide extending down a hallway, past the bedrooms and bathroom, to the kitchen.

¶ 13 Both bedrooms contained piles of what the investigator considered debris, including "boxes[,] bags and furniture items stacked approximately 7-8 feet high which made it impossible to enter into either bedroom"; no bed or crib was observed in either bedroom. The kitchen was cluttered with what the investigator considered debris, which covered the kitchen table, countertops, and stove. A "foul odor was present in the kitchen, different than the odor observed at the front of the house" and there were gnats present. The hot water heater was also not operating at the time.

¶ 14 The investigator took photographs of the condition of the home on December 6, 2011, and returned to the home on December 13, 2011, to perform a follow-up visit, but there was no answer when she rang the bell. The investigator went to the back of the home and observed that the back door was ajar, although the screen door was closed; through the screen door, she observed the kitchen to be in the same condition as it had been on December 6. The back stairs were also cluttered with items. The investigator took photographs of her observations on December 13.

¶ 15 During her visit on December 6, the investigator spoke to respondent's mother, who stated that respondent, respondent's mother, the child, and respondent's sister resided in the first floor unit. Respondent and respondent's sister slept on the couch in the living room,

respondent's mother slept on the reclining chair in the living room, and the child slept in his bouncy chair next to the reclining chair. There were also four cats and two dogs living in the home.

¶ 16 The investigator also spoke to respondent on December 13 at respondent's school. Respondent stated that she was afraid of her mother, who threatened to kick her out of the home if respondent did or said anything against her. Respondent was "at the mercy" of her mother to help with the child. Respondent had no vehicle and was unable to take the child to appointments unless respondent's mother took him to therapy, which she did not do. Respondent had attempted to apply the child's medication, but respondent's mother had it and respondent could not locate the tube.

¶ 17 Respondent told the investigator that she was unable to perform the child's stretching exercises because "there was no room to put the baby down because of the mess in the house." Respondent and her sister slept on the couch because there were no beds. The second floor unit was cluttered similarly to the first floor unit. The basement was flooded and "there is mold and mushrooms growing down there." No one could cook in the kitchen because everything was piled on the stove and countertops. Respondent was indicated[5] by DCFS for medical neglect and inadequate shelter, and respondent's mother was indicated for medical neglect, inadequate shelter, environmental neglect, and substantial risk of physical injury/environment injurious to health by neglect.

[5] A report of abuse or neglect is " 'indicated' " "if an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2010).

¶ 18 On May 29, 2012, the parties appeared before the court for its ruling on adjudication. The court first noted that on May 7, 2012, it had granted respondent's motion for a directed finding on the "neglect care necessary" allegation and then proceeded to reiterate the reasons for its ruling.[6] The court found that the testimony of child care personnel[7] was credible when they testified that respondent and her mother were indifferent to the child's suffering with eczema and unwilling to address the child's torticollis. However, the child's pediatrician testified that the child had been brought in for regular checkups and was being treated for both eczema and torticollis and specifically opined that there had been no medical neglect. Additionally, the court noted that the eczema continued even after the child had been taken into protective custody. Accordingly, the juvenile court could not find that the State had made a *prima facie* case supporting that respondent or her mother were the major cause of the child's medical problems and granted respondent's motion for a directed finding.

¶ 19 Turning to the remaining allegations, the court's decision was based on 10 photographs submitted by the State and received into evidence and the stipulated testimony of DCP investigator Sharon Dorfman. The court noted that the condition of respondent's home was "appalling," with two adults and two children living and sleeping in the living room "surrounded by papers, clothes, boxes, bags, furniture, blankets, carry-out food carton and other items that made movement to other rooms difficult." The court further noted that four cats and two dogs

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[6] The report of proceedings for the May 7, 2012, court date is not contained in the record on appeal.

[7] The court did not name the child care personnel.

shared the living space and that the investigator had described a "strong odor of urine," which was not denied by respondent or her mother. The court stated that the photograph of the kitchen depicted every surface piled with clutter, and that the investigator had described a different "foul odor" in the kitchen. The court found that the descriptions and explanations provided by respondent and her mother "do not match the conditions reflected in the photos or testimony of Ms. Dorfman or adequately explain how or why the family chose to live in such an environment." Accordingly, the court found that "the conditions depicted in the photos along with the descriptions provided in the stipulated testimony of the investigator Ms. Dorfman in each case supports a finding of neglect, injurious environment" and that the perpetrator of the neglect was respondent.

¶ 20 The court further found that there was not enough evidence to support an allegation of abuse due to substantial risk of injury. The court noted that the stipulated facts suggested the possibility of a fire hazard but did not find that such a hazard existed. Further, no one testified that mold existed in the basement due to standing water or that the debris blocked the exits such that it posed a fire or safety risk.

¶ 21 On June 26, 2012, the juvenile court *sua sponte* reconsidered its adjudication ruling and amended the adjudicatory findings to include that the neglect due to injurious environment of the child was the result of neglect by respondent's mother in addition to respondent.

¶ 22 II. Dispositional Hearing

¶ 23 The dispositional hearing began on August 3, 2012, and was continued to August 16, 2012.

¶ 24 A. Hal Getz

¶ 25 Hal Getz testified that he was a building inspector employed by the City of Chicago and visited respondent's home on April 26, 2012. The building department had made a determination that there should be a code enforcement proceeding in the circuit court, and Getz inspected the property in order to report his findings to the court. Getz had access to the full building: first floor, second floor, and basement. The purpose of Getz's observations was to determine if there had been compliance with previous cited violations.

¶ 26 Getz testified that there had been six violations cited, pertaining to both levels: an egress obstruction due to clutter; missing smoke detectors; missing carbon monoxide detectors; "junk and clutter"; rodent harborage; and roaches. When he inspected the property on April 26, four of the six items were in compliance: smoke and carbon monoxide detectors had been installed; and there was no evidence of rodents or roaches. The clutter and egress violations were not in compliance; both remaining violations pertained to the second floor. Getz determined the first floor to be habitable; the noncompliance of the second floor did not affect his determination of the first floor's habitability.

¶ 27 Getz also went to the basement during his visit, and "could tell that there were cats down there." Getz did not observe the cats but only smelled them, although the smell was not overwhelming.

¶ 28 Getz testified that he visited the property again on June 5, 2012, in order to update his recollection for the disposition hearing. The first floor was still in compliance, and the second floor was "relatively in the same condition" as the April visit. He did not smell any unusual

odors on either the first or second floors, and he did not visit the basement on his second visit.

¶ 29 Getz testified that respondent's mother informed him that they were all living on the first floor. He further testified that the court proceeding was ongoing, but that there was an agreed order that no one was permitted to live on the second floor.

¶ 30 B. Sonja Lindsey

¶ 31 Sonja Lindsey testified that she was employed by the Ada S. McKinley agency and was the former caseworker in the case; she was transitioning the case to a new caseworker, Rebecca El. Lindsey testified that the child was currently placed with his paternal grandparents and was not in need of any services. The child was required to carry an EpiPen due to his allergies, but his eczema and torticollis had resolved.

¶ 32 Lindsey last visited the foster home on August 2, 2012, the day before the disposition hearing. The foster home was safe and appropriate, with no signs of abuse, neglect, or corporal punishment. The foster parents raised concerns about respondent's inconsistency over the past month in picking up the child when she was scheduled to visit. Lindsey testified that "[t]he communication level has decreased" between respondent and the foster parents, with respondent failing to contact the foster parents on scheduled visitation days that she missed. Initially, the visits from respondent, scheduled on Tuesdays and Saturdays, were consistent, but began to be inconsistent in June and July; most of the visits missed were on Tuesdays, while respondent complied with visitation on Saturdays. Respondent had missed approximately seven visits. Lindsey spoke to respondent about the missed visits on July 31, and respondent explained on some days, she had transportation issues and on others, "she just wasn't available." Lindsey

testified that the child's foster mother kept a log of respondent's visits, signed by respondent, indicating the time out, time in, and condition of the child.

¶ 33 Lindsey testified that respondent did not drive and did not have a driver's license but lived two to three blocks from the foster parents' home, which Lindsey considered to be "walking distance." However, she lived approximately seven miles from the daycare center from which she was to pick up the child on Tuesdays. Lindsey further testified that the visits she observed between respondent and the child were safe and appropriate.

¶ 34 Lindsey testified that she observed one visit in which both parents were present; they were in a room while Lindsey observed behind an observation window. The visit was safe and appropriate, and the parents had "very positive" interaction.

¶ 35 Lindsey testified that there were concerns that needed to be addressed prior to permitting respondent additional unsupervised visits. Respondent was assessed to be in need of parent coaching and individual therapy. She was receiving parenting coaching and therapy from Vanessa White and was also visiting a private therapist. Lindsey spoke with the private therapist, but did not finish the conversation because the therapist "wanted to speak with [respondent] again to get clearance on a few things."

¶ 36 Lindsey testified that respondent was currently discharged from services with White because she had not been compliant in attending within the past three weeks. Respondent was "on the verge of being successfully discharged from parent coaching," but had "just a few sessions left that the therapist needed to tie up with her regarding parent coaching." However, respondent stopped attending her sessions as of July 1 and White had not heard from respondent.

¶ 37 Lindsey testified that one of the areas respondent was working on was exercising a level of independence, so that respondent could "advocate more in making decisions concerning her son and be[] able to exercise her level of authority as a parent." When she was initially assessed in January, respondent was receiving "extra co-parenting" training from the child's former foster parents, who permitted respondent to stay overnight with them to learn to deal with the child's needs. This led to the agency approving unsupervised day visits in February.

¶ 38 Lindsey testified that respondent's plan was to live on the first floor of the home, while her mother and sister lived on the second floor.

¶ 39 Lindsey testified that there was also a concern over respondent's hearing, with respondent being in need of hearing aids, which she had not yet had an appointment to receive. Lindsey testified that respondent's hearing loss "may affect her not being able to hear her son at night or even during the day when he's napping. It may affect if he falls, if she can hear it. I don't know the strength level of what she's able to hear or not; but, I do know that [respondent] reports to me that she reads lips a lot for things she cannot hear. And *** I have to speak loudly and not whisper for her not to hear." It was also a concern that respondent had not addressed the issue because "[s]omething concerning any medical issues, she should be a little bit more concerned and want to get it corrected to help aid in her being able to hear better."

¶ 40 Lindsey testified that it was the agency's recommendation that the child become a ward of the State but that he be returned home to the father with an order of protection in place. The agency was not recommending return home to respondent because "[s]he has to finalize this parent coaching and therapy issue. We have a major concern with her proper ability to hear and

not having the proper hearing aids."

¶ 41 Lindsey testified that she first became aware of respondent's hearing problem in March, when the former foster parents informed her of the issue. Once she became aware of the issue, respondent's service plan was amended so that respondent would sleep in the same room as the child in order to be able to hear him. Lindsey testified that she spoke with respondent about the hearing issue often, asking what she was doing about obtaining "proper" hearing aids; respondent had hearing aids but refused to wear them because they were "outdated."

¶ 42 Lindsey testified that respondent received medication through a private psychiatrist and that respondent had signed a consent form for release of information for her therapist but not her psychiatrist, so Lindsey had no way of contacting the psychiatrist. Any information about respondent's compliance with her medication came from respondent herself. Additionally, while Lindsey had requested information from respondent's therapist, the therapist claimed that she had not received the requests and would not speak about respondent's treatment without respondent's confirmation that it was permitted.

¶ 43 Lindsey testified that she had last visited respondent's home the past Tuesday, where she had conducted a CERAP.[8] The first floor still contained "a little small odor of pets in the home," and still had clutter, but was a "tremendous improvement" over its previous condition. Lindsey testified that there were still concerns about permitting a toddler unsupervised and overnight visits in the home, one of which was respondent's ability to hear. Additionally, "we still have concerns considering the environmental structure of [respondent's] home and to ensure that the

[8] CERAP is a "Child Endangerment Risk Assessment Protocol."

home is child-proof enough for a toddler to wander about throughout the entire apartment."

¶ 44 C. Rosalie E.

¶ 45 Rosalie E. testified that she was the father's mother and that she and her husband had been the child's caregivers since March 13, 2012. In addition to Rosalie, her husband, and the child, the household also contained her three children, including the father; the child had his own room. The child attended daycare five days a week, because Rosalie and her husband both worked full-time. The father was currently at basic training for the Army reserves, and would be stationed in Chicago after the training. They had discussed the child living in the household permanently, and Rosalie and her husband were willing to care for the child while the father was away.

¶ 46 D. Vanessa White

¶ 47 Vanessa White testified that she was a family therapist employed at Ada S. McKinley, and was respondent's parenting coach. When she initially assessed respondent, White observed no cognitive issues; her only concern, which she addressed directly with respondent, derived from respondent's hearing loss: "unless she's speaking directly to you in front of you, there's definitely a disadvantage by her to be able to hear, and so I encouraged her to follow up with her parent and possibl[y] *** because she's under her parents' insurance of getting a hearing aid."

¶ 48 White did not observe any parenting deficits, but only provided respondent with a list of "life-skills tasks as a mom," for instance, always carrying a copy of the child's medical card in case anything happened. White did not believe that respondent was in need of parenting coaching, but observed a "need for parenting support."

¶ 49 On approximately June 5, White made an unannounced visit with respondent and the child in respondent's home in order to observe them in their home environment; when respondent came to the agency for her parenting coaching session, White informed her that they would be traveling to respondent's home. When they arrived, respondent's mother and their pets were present, and White spoke with respondent's mother to assess whether she could provide parenting support to respondent; the information respondent's mother provided White indicated that she would support respondent.

¶ 50 White testified that one of the reasons for visiting the home was to observe its state, which was one of the agency's concerns due to its clutter. White observed the living room, and while it was cluttered, there was room to sit. White also observed respondent's bedroom, which was very clean, except that half the space was occupied by her mother's things. White did not go into the basement or onto the second floor. White also noticed an odor, and both respondent and her mother acknowledged that they were pet owners. Based on her observations, White opined that the home was not safe for a toddler and was uninhabitable due to the clutter.

¶ 51 White testified that after court on June 6, she overheard respondent leave the courtroom and yell, " 'Forget it. I don't want him anymore. I don't want him. He can have him.' " White wanted to speak to respondent, but observed the caseworker speaking to her and did not want to interrupt. White did not judge respondent, since she knew that "people say things when they're upset," but needed to know what had provoked the response and to make sure that it was addressed. White was able to speak with respondent on the phone, and they planned to meet on June 30 to discuss the situation, but respondent missed the session. White testified that

respondent missed three consecutive sessions, resulting in being discharged, but that she could enroll again.

¶ 52 On cross-examination, White identified some of the life skills that respondent needed as gaining employment experience, learning the transit system, obtaining a state identification card, and, generally, learning to be independent from her mother. She further testified that it was typical for someone respondent's age not to have those skills.

¶ 53 White testified that respondent and her mother informed White that they had cats in the basement and a dog in the backyard and White discussed the responsibilities of pet ownership with them.

¶ 54 On redirect examination, White testified that she did not believe that respondent's hearing loss affected her ability to parent the child safely, but thought that "it affects her ability to live her life to the most optimal standards that she could as a person."

¶ 55 E. Respondent

¶ 56 Respondent testified that she was 19 years old, had taken a consumer education course, and had completed an application for employment at Target. She further testified that she had an "appointment for [her] hearing" scheduled in September at Resurrection Hospital. She obtained copies of her birth certificate and social security card and had obtained a state ID, which had been stolen the day before the hearing.

¶ 57 Respondent testified that she was supposed to pick up the child from daycare, but that she was unable to do so without her mother's assistance, since she did not drive and had no money for bus fare. When she could not pick the child up, she text-messaged and called the daycare

center, but there was no response. Respondent further testified that she attempted to call, leave messages, and text on the dates that she missed her appointments with White.

¶ 58 Respondent testified that she did not believe her hearing issues affected her parenting, since "for a baby to cry is very loud and I can hear him. I can hear a lot of things. I just cannot hear whispers."

¶ 59 Respondent testified that she and her mother "would do whatever it takes" to make their home safe for the child if he was to come home. She further testified that they had done everything they were told to do to childproof the home and removed any dangerous objects that they believed could harm a toddler. A "homemaker" also came to the home once a week.

¶ 60 F. Juvenile Court Ruling

¶ 61 The juvenile court, in its ruling, found that there was no contesting that both of the child's parents had a bond with the child and that there was something in each parent's case that was standing in the way of actually providing a home for the child. In respondent's case, the court noted that she had grown up in a sheltered and protected environment and had not developed the skills to be able to parent the child independently. It further noted that everyone's concern was that, unless the dynamic of her home changed, those skills might never develop and that respondent's mother had not fully cooperated. The court stated that "at this point in time, we don't know if there's a psychological issue or a family therapy issue or what type of issues need to be addressed in that environment and despite pictures and all sorts of assertions that the home is now safe, there's nothing wrong with the home, every person that gets up on this stand talks about that same issue, the clutter, the smell. It's just difficult for the Court to determine at this

stage, you know, what the truth of the matter is and what, if any, risk[s] do exist." The court continued: "It may be nothing, but frankly I can't tell and I know from the integrated assessment, there are issues relative to the relationship between the maternal grandmother and the natural mother that impact mother and will have and do have impact on her ability to be a parent, independent in providing care for her child and that further services and support are needed in that regard."

¶ 62 Concerning the father, the court stated that "the bottom line is that I am not comfortable returning the child to his care." The court noted that, first, "I'm not impressed at all with the evaluation of his ability to be a parent with a young infant," and that the father would be relying as much on his parents as respondent did on hers. Second, the court noted that no one could predict the responsibilities arising from the father's recent participation in the Army reserves.

¶ 63 The court found it in the child's best interest to make him a ward of the court and found both respondent and the father unable for some reason other than financial circumstances alone to care for, protect, train, or discipline the child. The court further found that reasonable efforts had been made to prevent or eliminate the need for removal of the child from his home and that appropriate services aimed at family preservation and family reunification were unsuccessful. The court placed the child in the custody and guardianship of D. Jean Ortega-Piron, DCFS Guardianship Administrator, with the right to place the child.

¶ 64 The court noted that the child would likely remain where he was—with the father's parents—and that its order would "allow for services to be put in place in an effort to be made to get one or hopefully both of these parents at a point where the Court can return the child to their

care and custody *** not the grandparents but to their care and custody and they can be ready for the responsibility of being a parent and be a parent for the child." The court also ordered the parties to mediation and indicated that it wanted a plan to assist respondent in developing independent living skills and parenting skills.

¶ 65 III. April 22, 2013, Court Date

¶ 66 On April 22, 2013, the parties came before the juvenile court on several motions: (1) the father's motion to return the child home and close the case, (2) respondent's motion to return the child home, and (3) respondent's motion to order the Public Guardian to change the purchase of service (POS) agency from Ada S. McKinley. While the court continued the father's motion, it denied both of respondent's motions.

¶ 67 Respondent's change of POS motion was based on the agency's handling of respondent's hearing problems.[9] The motion claimed that the petition for adjudication made no allegations concerning respondent's ear condition, but the caseworker at the dispositional hearing testified that one of the reasons that the agency felt that respondent could not parent her child was her hearing loss. Furthermore, the agency continued to focus on her hearing loss as placing her child at risk, despite the fact that respondent's hearing loss "had absolutely nothing to do with why this case came in to the system." The motion further claimed that, at an administrative case review, respondent's counsel informed the caseworker that a task in respondent's service plan "requiring Respondent to 'provide the agency with a plan regarding addressing her issue with her hearing'

[9] The motion stated that respondent had a congenital condition in that she was born without eardrums.

to 'alleviate [the child] being danger [*sic*] because she is unable to hear whether the child is in duress or is hurt" violated respondent's civil rights, but the agency did not remove the task from the service plan.

¶ 68 Respondent claimed that the agency's conduct violated her constitutional and civil rights and violated DCFS' policy for deaf and hard-of-hearing clients. Respondent claimed that DCFS and the agency had the burden of accommodating and assisting parents who are deaf or hard of hearing and that no specialized services had been offered to respondent, nor had a properly trained agency worker been assigned to her case. The only relief was that, after respondent had filed a service appeal, DCFS counsel instructed the POS agency to remove the requirement in the service plan.

¶ 69 Respondent also challenged the agency's response to a December 6, 2012, order regarding visitation in which the juvenile court ordered supervised day visits, with an attempt to hold at least one visit per week in respondent's home if safe and appropriate. First, respondent claimed that no CERAP was scheduled until after the parties engaged in mediation at the end of January 2013. Additionally, on February 6, 2013, the caseworker conducting the CERAP asked respondent about the animals in the building, which is a two-flat. Respondent informed the caseworker that the dog was in the upstairs unit with respondent's mother and sister and that the cats were in the basement. The caseworker provided respondent with a list of minor items to complete before visits in the home could begin, but did not instruct respondent to remove the dog and cats. The service plan entered on that date also only required respondent to ensure that pets were not "within reach" of the child, but did not indicate that no pets could be in the building.

¶ 70 However, on March 25, 2013, the casework supervisor sent respondent's counsel a letter stating that the condition of the home failed the CERAP because of the presence of animals in the building even though the supervisor confirmed that there was no opinion from a medical provider that the child not be in a home where animals are present. The motion claimed that "[t]he agency's conduct with regard to Respondent's congenital ear condition combined with its deliberate attempt to avoid complying with the Court's order by coming up with a new and unjustified requirement for the entire two-flat to be free of all animals demonstrates that it is acting in bad faith with respect to reunifying [the child] with his mother."

¶ 71 Attached to the motion was a December 6, 2012, court report prepared by caseworker Rebecca El. Under "Summary of Services Provided," the report stated that since July 2012, respondent was to re-engage in parent coaching with Vanessa White, but had only attended two sessions, one in September and one in October. White had also recommended that respondent complete an Ansell-Casey assessment to determine the assistance needed with independent life skills, but respondent had not completed the assessment. Respondent was also engaged in individual therapy addressing anxiety and depression; while respondent had twice signed consents to release the information, the therapist refused to release information or reports, stating that respondent had informed the therapist that she did not want any information released to the agency. The agency also requested a psychological evaluation. Respondent "has been active in participating in unsupervised visitation with her son *** throughout a majority of the reporting period," but unsupervised visitation was placed on hold on October 31, 2012, when El observed the child in respondent's home during a visit. After the visit, the child arrived at his foster home

with a swollen face and rash, which a medical examination revealed had been caused by an exposure to smoke and possible ingestion of chocolate and peanuts. Respondent denied giving the child any candy during the visit or exposing him to smoke. El informed respondent of the change in visitation plan on November 1, but respondent refused to contact the agency until November 16. Supervised visitation began on November 20, 2012.

¶ 72 Under "Summary and Recommendations," the report stated that, "[d]uring this reporting period there has been little progress by [respondent] in assuring that [the child] is returned to her care." The report further stated:

> "What is of grave concern to the agency is [respondent's] hearing capability and the impact of her mental health on her ability to adequately parent. [Respondent] has a serious hearing loss and reads lips. With a very mobile toddler, as [the child] there is no guarantee that she can always be in the same room/place as he. Therefore, the possibility of not hearing him poses a risk to his safety. In September 2012 [respondent] informed the agency that she was to schedule an[] appointment with her (Otolaryngologist) Dr. Thomas Garrity with Resurrection Hospital ***. On December 4, 2012 [respondent] informed this writer that implant surgery has been highly recommended. No date has been scheduled for the surgery as her mother has to give the approval."

The report also stated that "[t]he agency does not have an understanding/information regarding

her mental health as she has refused to allow her therapist/psychiatrist to submit reports to the agency" and also noted that she had not completed parenting coaching with White, attending two of seven appointments since September 2012 and not completing the Ansell-Casey assessment recommended by White.

¶ 73 The report further noted that the City of Chicago building department had been involved with the family home since December 2011 and that "[t]he agency is not aware of any final resolution on their involvement," but that, during monthly visits to the home, El had observed some improvement. However, during the December 4, 2012, monthly visit, El was informed by respondent that El was only permitted in the living room and dining room of the home. The agency was not recommending the reinstatement of unsupervised visitation "due to [respondent] not taking responsibility of possibly risking [the child's] health as it was clear that he had ingested foods/candy that triggered an allergic reaction on October 31, 2012 in addition to denying having him in her home with unauthorized persons." The report concluded that, "[d]ue to the lack of progress by [respondent] the agency recommends that [the child] be returned home to his father under a supervision order. *** The agency does not see the need to have [the child] remain in care as he has a capable parent with a strong support network."

¶ 74 Also attached to respondent's motion was a letter from Karolynn Mitchell, a supervisor at the agency, which stated:

> "On February 6, 2013 a CERAP was conducted and the home deemed unsafe. There are pets in the home, and given [the child's] extensive allergies he is to be examined by a board certified

> allergist to determine if pet dander is an irritant. An appointment for the evaluation in scheduled for April 6, 2013. Once this evaluation is completed and the results received we will be able to finish the CERAP and hopefully begin in-home visitation between [the child] and his mother."

¶ 75 Before the juvenile court on the hearing of respondent's motions, with respect to respondent's motion to remove the agency, DCFS counsel admitted that the service plan mentioned in respondent's motion did not comport with DCFS policy, but stated that the language had been amended as of the February 6, 2013, service plan. DCFS counsel also stated that the agency would like documentation from respondent's audiologist in order to learn the extent of respondent's hearing loss. They could then determine "if there's any equipment that might be helpful, maybe a baby monitor, something that could help her hear [the child] if he's making noise in another room." There was some question as to whether consents had been previously provided to respondent, with respondent's counsel stating that respondent had not yet been presented with one and respondent's caseworker, Rebecca El, stating that respondent signed the consent in December, but that no documentation had yet been provided. El further stated that she called to follow up, but still did not receive a response.

¶ 76 The court noted that "I am disappointed with the agency's position relative to the hearing and the fact that, you know, we're this far into the case, and this is an issue. So *** they took the position, I think, incorrectly, and I think -- I don't know if the agency acknowledges it. I assume they do. But if they don't, DCFS Legal has. And it's clear to me that this was not treated [as] a

disability the way it should have [been]." However, the court also noted that the agency needed the documentation and ordered respondent to immediately sign the consent forms.

¶ 77 Concerning the issue of failing the CERAP due to the presence of pets, El stated that the agency thought the presence of the animals was unsafe: "We have confirmation that [the child] is -- has severe allergies to pet dander, cats, and dogs. I was only allowed on the first floor [during the February 6 CERAP]. I don't know how they're housed." El stated that it was agreed during the mediation, at respondent's counsel's request, that she only CERAP the first floor; respondent's counsel disagreed with El's statement that it was his request. El further stated that an earlier report had indicated that the child had a number of allergies, including pet dander, and that respondent's counsel had disagreed with the report and requested the child be retested.

¶ 78 The court stated that it believed that the agency was wrong in how it handled respondent's disability but nevertheless denied the motion to remove the agency. Other than the hearing issue, the court pointed out that "every other thing that you point to, they can, and I can point to something your client has or has not done." The court also denied respondent's motion to return home.

¶ 79 The court asked if there were any other safety issues, and El informed the court that the only "safety issue[]" that the court needed to be aware of was respondent's recent disclosure of a paramour who was living with her. El stated that a verbal CANTS and LEADS search revealed 14 arrests for the paramour.

¶ 80 The court also entered a permanency order with a goal of return home in five months, and also made a finding of reasonable efforts and that the placement was necessary and appropriate to

the case plan and goal. The court also ordered respondent and the father to mediation, with no attorneys, agency workers, or extended family present—"[j]ust mother and the father."

¶ 81 IV. June 6, 2013, Court Date

¶ 82 The parties came before the juvenile court on June 6, 2013, on the father's continued motion to return home. The court heard testimony from Rebecca El and the father, then made its ruling.

¶ 83 A. Rebecca El

¶ 84 Rebecca El, the caseworker with Ada S. McKinley, testified that the child had been living with his father in the home of the father's parents for approximately a year and was very attached to the father. The father was initially assessed to complete a mental health assessment and participate in a male mentoring group, both of which had been completed successfully. The father worked at Pizza Hut and had a once-a-month obligation to the Army reserves. While the father was working and serving with the Army reserves, the rest of his family took care of the child. El testified that it was the agency's position that the child be returned home to the father; there were no concerns regarding the child's health, safety, or welfare if he was returned.

¶ 85 On cross-examination, El testified that the child was also attached to his mother. She further testified that now that they had respondent's records, the agency no longer believed that respondent's hearing loss posed a risk to the child. El testified that there were outstanding services remaining for respondent, including a psychological evaluation, but that now the agency had all of the records needed in order for the psychological evaluation to be completed. Another outstanding service was completion of the Ansel-Casey assessment; El testified that respondent

appeared at the agency one day, but could not confirm respondent's counsel's claim that she had appeared to take the assessment.

¶ 86 Also on cross-examination, El testified that the child recently underwent additional allergy testing, which revealed a high level of allergy to cats and dogs, as well as food allergies. The doctor did not make any recommendation with regard to proximity to animals; "[w]ith regard to cats, he suggested that they be removed all together because of the hair that the pet has, may cause some upper respiratory distress" for the child. The doctor also stated that a complete diagnosis of an allergy to cats could not be made until he had information as to how the child actually reacted to exposure to cats. As of the last CERAP of respondent's home, on May 9, 2013, pets continued to reside in the home, although they were confined to the basement.

¶ 87 El further testified that as of the last CERAP, respondent's paramour was present. According to the worker performing the CERAP, the paramour resided in the home and provided the worker with his contact information so that he could be assessed for services. However, El was unable to contact him via the phone number he had left. El testified that the CANTS and LEADS searches revealed 14 arrests, ranging from violation of city ordinances to drug offenses. She further testified that, until the paramour could be assessed for services, the recommendation was for respondent's visitation to be supervised.

¶ 88 B. Ezekiel B.

¶ 89 The father testified that the child needed both of his parents and that he would ensure that visitation with respondent continued. He further testified that his commitment to the Army reserves was one weekend a month and two weeks annually. While he was serving in the

reserves, he would be home at night.

¶ 90 C. Juvenile Court Ruling

¶ 91 The court stated that it was entering a modified disposition order. The disposition findings as to respondent would remain the same as they were on August 16, 2012. As to the father, the court found him fit, able, and willing to care for, protect, train, and discipline the child and, given that finding, entered an order of protective supervision and returned the child to the custody of the father. The disposition order included a finding that reasonable efforts have "been provided to make it possible for the minor to return to the parent, guardian or legal custodian."

¶ 92 With respect to the order of protective supervision, the court cautioned the father that the child was still a ward of the court and would remain so until the court felt that no further court monitoring was needed; at that point, the court would close the case.

¶ 93 On July 8, 2013,[10] respondent filed a notice of appeal, listing only the June 6, 2013, modified disposition order and order of protection as the orders being appealed. This appeal follows.

¶ 94 ANALYSIS

¶ 95 As noted, on appeal, respondent challenges only the juvenile court's finding that the agency had made reasonable efforts to return the child to his parents. The juvenile court's finding of reasonable efforts occurred in the course of its modified disposition ruling, and is

[10] We note that the 30th day after June 6, 2013, was July 6, 2013, a Saturday. Accordingly, the filing of the notice of appeal on Monday, July 8, was timely. *Chicago v. Greene*, 47 Ill. 2d 30, 33 (1970). See also *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 28 n.1 (2002).

reviewed in the same way as any other decision made during that ruling. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011). A reviewing court will reverse the juvenile court's determination "only if the factual findings are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order." *In re Kamesha J.*, 364 Ill. App. 3d 785, 795 (2006); see also *In re Malik B.-N.*, 2012 IL App (1st) 121706, ¶ 56; *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009); *In re Gabriel E.*, 372 Ill. App. 3d 817, 828 (2007). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004) (citing *In re Edward T.*, 343 Ill. App. 3d 778, 794 (2003)). "Because a trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different decision." *In re April C.*, 326 Ill. App. 3d 245, 257 (2001) (citing *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998)).

¶ 96 The basis of respondent's argument is the POS agency's treatment of her hearing loss. To that end, her brief on appeal focuses on DCFS' internal procedures to define whether the agency made "reasonable efforts" in light of her hearing problems. However, while administrative regulations have the force and effect of law (*Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 368 (2009)), the procedures are not administrative regulations but are instead DCFS' internal documents. Respondent has not provided us any authority for using these procedures to provide the legal standard for what conduct comprises "reasonable efforts" in the context of a person who is deaf or hard of hearing, and we decline to do so. See *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, ¶ 35 (declining to use a definition found in DCFS

procedures as the legal standard for behavior constituting neglect).

¶ 97 Additionally, to the extent that respondent argues that "[t]his Court has not ruled on whether a violation of the [Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 *et seq.* (2012))] and DCFS' own procedures regarding services to the hearing impaired warrants a no reasonable efforts finding by the trial court," respondent misunderstands the scope of the question before us. As noted, we have been asked to review only the juvenile court's reasonable efforts finding made on June 6, 2013. There has been no finding as to whether the agency violated the ADA[11], and we will not make such a finding on appeal. Moreover, even if the juvenile court arguably found a violation of DCFS procedures when it expressed its disappointment in the treatment of respondent's hearing loss during the April 22, 2013, court date in which it denied respondent's motion to remove the agency, as noted, DCFS procedures do not have the force of law as regulations would. Consequently, we will not impose a *per se* rule that violation of the procedures means that the agency failed to make reasonable efforts.

¶ 98 Furthermore, in the case at bar, regardless of the merits of respondent's arguments as to the agency's conduct with regard to respondent's hearing loss, we cannot find that the juvenile court's reasonable efforts finding was against the manifest weight of the evidence. "[R]easonable efforts determinations are time specific: they address the adequacy of DCFS efforts only as of the time of the ruling." *In re Patricia S.*, 222 Ill. App. 3d 585, 593 (1991); *In re Edward T.*, 343 Ill. App. 3d 778, 793 (2003). Thus, we must examine the agency's conduct as

[11] In their briefs, the Public Guardian and DCFS both agree that, as a public entity, DCFS is subject to the ADA. Thus, we need not consider the issue of whether the ADA applies to DCFS or its POS agency.

of June 6, 2013.

¶ 99 At the June 6, 2013, hearing, Rebecca El, the caseworker, testified that they had received respondent's records and no longer believed that respondent's hearing loss posed a risk to the child. El further testified that there were outstanding services remaining for respondent, including a psychological evaluation, but that now the agency had all of the records needed in order for the psychological evaluation to be completed. Another outstanding service was the completion of the Ansel-Casey assessment; El testified that respondent appeared at the agency one day, but could not confirm respondent's counsel's claim that she had appeared to take the assessment.

¶ 100 El also testified that the child recently underwent additional allergy testing, which revealed a high level of allergy to cats and dogs, as well as food allergies. The doctor did not make any recommendation with regard to proximity to animals; "[w]ith regard to cats, he suggested that they be removed all together because of the hair that the pet has, may cause some upper respiratory distress" for the child. The doctor also opined that a complete diagnosis of an allergy to cats could not be made until he had information as to how the child actually reacted to exposure to cats. As of the last CERAP of respondent's home, on May 9, 2013, pets continued to reside in the home, although they were confined to the basement.

¶ 101 El further testified that as of the last CERAP, respondent's paramour was present. According to the worker performing the CERAP, the paramour resided in the home and provided the worker with his contact information so that he could be assessed for services. However, El was unable to contact him from the phone number he had left. El testified that the CANTS and

LEADS searches revealed that the paramour had 14 arrests, ranging from violation of city ordinances to drug offenses. She further testified that, until the paramour could be assessed for services, the recommendation was for respondent's visitation to be supervised.

¶ 102 Thus, as of the June 6, 2013, hearing date, the juvenile court heard testimony that the agency had reevaluated any safety risk posed by respondent's hearing, had arranged for allergy testing for the child, had conducted a CERAP of respondent's home, and had attempted to contact respondent's paramour. The juvenile court further heard testimony that respondent had several services outstanding, that the presence of pets in respondent's home was still problematic, and that respondent's paramour had not been assessed for services because he could not be reached. In light of this testimony, we cannot say that the juvenile court's finding that DCFS had made reasonable effort to return the child to his parents was against the manifest weight of the evidence.

¶ 103 Furthermore, even looking back to the hearing on April 22, 2013, in which the juvenile court made a number of comments as to the agency's conduct with regard to respondent's hearing loss, the juvenile court nevertheless found reasonable efforts on the agency's part, a decision that was not against the manifest weight of the evidence. During that hearing, the court was told that the agency had amended the service plan, that they needed documentation as to the extent of respondent's hearing loss, and that it was by respondent's request that the CERAP only include the first floor. While the court noted that "it's clear to me that this was not treated [as] a disability the way it should have [been]," the court also noted that the agency needed documentation from respondent's audiologist in order to determine the appropriate services and

ordered respondent to immediately sign the consent forms. The court stated that it believed that the agency was wrong in how it handled respondent's disability but nevertheless denied the motion to remove the agency, pointing out that, other than the hearing issue, "every other thing that you point to, they can, and I can point to something your client has or has not done." Given the evidence of the agency's efforts in the case, which included the exhibits attached to respondent's motion, we cannot find that the juvenile court's finding that those efforts were reasonable was against the manifest weight of the evidence.

¶ 104 As a final matter, respondent argues that a finding that the agency had not made reasonable efforts would be in the child's best interest, because "[i]t is in [the child's] best interests to have both his parents found fit, willing, and able to parent [the child]." While we agree that ideally, the child's parents would both be fit, willing, and able to parent him, we cannot agree that the finding respondent seeks would further that goal. The child is currently with his father and paternal grandparents, as he has been since he was a year old. Furthermore, the father has expressed his desire that respondent continue participating in parenting the child, and the parents have a good relationship. As the Public Guardian notes in its brief, respondent is not asking us to reverse the dispositional order that found the father fit, willing, and able to parent the child, nor is she asking us to reverse the finding that she is unable to parent the child. Moreover, despite respondent's concern that a no reasonable efforts finding would ensure that DCFS will comply with its procedures, the juvenile court made clear that DCFS needed to properly address respondent's hearing issues and also made clear that the case is not closed and would still be under judicial oversight. Accordingly, we affirm the juvenile court's finding that

the agency made reasonable efforts to return the child to his parents.

¶ 105 CONCLUSION

¶ 106 Since there was evidence demonstrating the POS agency's efforts in providing respondent services, we cannot find the juvenile court's finding that the agency made reasonable efforts to reunite the child with his parents against the manifest weight of the evidence.

¶ 107 Affirmed.