2012 IL App (3d) 100659-U

Order filed January 18, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re Z.R., a Minor	)	Appeal from the Circuit Court
(The People of the State	)	of the 10th Judicial Circuit,
of Illinois,	)	Peoria County, Illinois.
Petitioner-Appellee,	)	
	)	
	)	Appeal No. 3-10-0659
v.	)	Circuit No. 10-JA-176
	)	
Lindsey I.,	)	Honorable
	)	Richard D. McCoy,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding that the appellant was an unfit parent was not against the manifest weight of the evidence.

¶ 2 The circuit court found that Z.R., an infant, was neglected due to an injurious environment. During a subsequent dispositional hearing, the circuit court found the appellant, Z.R.'s mother, to be unfit, made Z.R. a ward of the court, and awarded custody and guardianship

of Z.R. to his father on a temporary basis. Z.R.'s mother appeals from the circuit court's order finding her unfit.

¶ 3 FACTS

¶ 4 On June 16, 2010, the State filed a juvenile petition alleging that Z.R. was neglected due to an injurious environment. The State's petition alleged that Z.R's environment was injurious to his welfare in that: (1) the appellant was previously found unfit in three Peoria County cases in September 2009 involving the neglect of Z.R.'s siblings, and there had been no subsequent finding of fitness; (2) the appellant had "not completed services that would result in the return home of [Z.R.'s] siblings"; (3) on or about December 10, 2008, Z.R.'s father (who was the appellant's paramour at the time) struck Z.R.'s five-year-old half sister and two-year-old half brother on the buttocks with a belt, causing substantial bruising, and both siblings reported being afraid of Z.R.'s father; and (4) Z.R.'s father was previously indicated by the Department of Children and Family Services (DCFS) on December 10, 2008, for "substantial risk of physical harm and cuts/welts/bruises." The appellant filed an answer stipulating to all counts of the State's petition.

¶ 5 On August 17, 2010, the circuit court held an adjudicatory hearing on the State's petition. The State presented a proffer which outlined the factual basis for the petition. During its proffer, the State submitted certified records from the three previous cases in which the appellant's other children were found neglected due to an injurious environment. The juvenile petitions filed in those cases alleged that two of the children were also the subject of a prior petition filed in Peoria County juvenile court wherein one of the children was beaten by Anthony Groh, the appellant's paramour at the time. The petitions filed in the three prior cases also made the same

allegations that the State raised in the June 16, 2010, petition regarding Z.R.'s father's abuse of Z.R.'s siblings in December 2008. The appellant's children were adjudicated neglected in the three prior cases, and the appellant was found unfit on September 15, 2009. The basis for the court's finding that the appellant was unfit was the recurring abuse of the children by multiple men she had chosen (both her husband and her paramour) and the fact that she stayed with her latest paramour (Z.R.'s father) for approximately eight months, thereby rendering the appellant an unsuitable placement. At the initial permanency hearing, the court found that the appellant remained unfit.

¶ 6 During its proffer, the State also presented a summary of the proposed testimony of Angela Perkins, the case worker assigned to the appellant's case, and Darcy Oliver, a supervisor at DCFS. The State claimed that Perkins would testify that when she received the case on May 17, 2010, the appellant told her that she had not spoken with Z.R.'s father in approximately four months. However, on June 7, 2010, Peters was shown a photograph of the appellant riding on the back of Z.R.'s father's motorcycle. Moreover, the Stated claimed that Oliver would testify that when she spoke with the appellant on June 14, 2010, the appellant again denied having any contact with Z.R.'s father. When the appellant was confronted with the fact that case workers had seen a photograph of the appellant with Z.R.'s father, the appellant replied that she did not say anything about having contact with Z.R.'s father because she thought she would get in trouble. The State also claimed that Perkins and Oliver would testify that this was "part of a pattern" of the appellant not disclosing information (such as the fact that she had spent the night at Z.R.'s father's home) and of denying such facts until the case workers knew otherwise.

¶ 7 The State also stated that it would present either the testimony of the appellant's counselor, Carol Blaha, or a certified counseling report prepared by Blaha. According to the State, Blaha's testimony or her report would indicate that, although the appellant had consistently attended counseling sessions, she "ha[d] not really been opening up in counseling" and she "only wanted to talk about things that she wanted to talk about or that she viewed as being harmless." In addition, Blaha would state that the appellant told her that she was no longer in a relationship with Z.R.'s father and that she did not think that there was ever any problem with her relationship with him. The State also noted that Sharon Minere, another of the appellant's counselors, would testify that she was "having the same experience of [the appellant] not wanting to get very deeply into topics that the counselors want to talk about and she doesn't."

¶ 8 After the State completed its proffer, the circuit court asked appellant's counsel if he had any comments. He responded that he did not. The State's exhibits were admitted without objection from the appellant. The circuit court found the State's petition proven in its entirety.

¶ 9 Immediately thereafter, the circuit court held a dispositional hearing. The State asked the court to find the appellant unfit because she had stayed with Z.R.'s father until recently or was still in a relationship with him and because she was currently denying that Z.R.'s father had ever hurt her daughter, even though his abuse of her daughter was adjudicated fact. The guardian *ad litem* also recommended that the appellant be found unfit. Both the State and the guardian *ad litem* also asked that Z.R.'s father be found unfit based upon his prior physical abuse of Z.R.'s siblings.

¶ 10 Perkins and Oliver prepared a dispositional report which the circuit court reviewed. According to the report, the appellant told a case worker in August 2009 that the appellant was

involved with DCFS because, "her ex, Roger, struck [the appellant's daughter] on the butt" and "[d]aycare reported the bruise." However, when another case worker spoke with the appellant in May 2010, the appellant told that case worker that her daughter had received the bruise when she slipped and fell on some ice and denied that Z.R.'s father had ever used corporal punishment on any of her children. The report noted that the appellant maintained contact with Z.R.'s father and that the appellant claimed that she and he were "co-parenting" Z.R.

¶ 11 The report indicated that a case worker had visited the appellant's home and found it to be "safe and well kept." The appellant drank socially but did not abuse illegal substances. The report also noted that the appellant was currently unemployed and actively seeking employment, that she relied on her mother to pay her rent, and that she had asked Z.R.'s father for money. In addition, she had once spent 48 hours in jail following an alleged domestic battery.

¶ 12 The report noted that the appellant had three children with a man named Robert Brown and one child (Z.R.) with Z.R.'s father. The appellant was married twice, once for eight days to a man named "Tony," and once for approximately one year to a man named Mitchell Haden. The appellant divorced Tony after he "beat up" the appellant's daughter while the appellant was at work. The report indicated that "Tony" took the appellant's daughter to the hospital after the incident and later told the appellant that he had hit her daughter, causing her to fall off of the bed and hit her head on an object on the floor.

¶ 13 The report stated that the appellant visited Z.R. on a weekly basis and that she played with her children, disciplined them appropriately, and was both verbally and physically affectionate with them. In addition, the appellant took advantage of additional visitation opportunities during holidays, school trips, and doctor appointments. However, the report noted

that, at times, the appellant seemed "unable to safely attend to" all four of her children simultaneously. For example, during one visit, the case worker observed that the appellant failed to notice that her daughter left the room while the appellant was telling her son not to throw a toy chair. The report noted that the appellant was "working on" this problem "to ensure that she can safely care for all four children simultaneously."

¶ 14 The report noted that the appellant had always returned the case worker's phone calls and had been otherwise cooperative and willing to participate in court-ordered services relating to the prior cases in which she was adjudicated unfit. However, the case worker was "concerned with the lack of voluntary disclosure from [the appellant] since Z.R.'s birth." Specifically, the appellant repeatedly told case workers that she was not having any contact with Z.R.'s father. When confronted with proof that she had been seeing Z.R.'s father, the appellant would make excuses, shift the blame to others, and/or admit that she had lied because she "thought she would get in trouble." The report recommended that the appellant undergo counseling to help her to assume greater personal responsibility, improve the way she manages relationships with others, "address the choices she has made in male partners," and "enter[] into a deeper level of personal honesty where she addresses her history, current behavior and plans for her future." The report recommended that the appellant "must commit to chronic [*sic*] diligence in choosing future partners who are safe, healthy and beneficial to herself and to her family." Although the appellant had successfully completed a parenting class and a domestic violence course, the dispositional report recommended that both the appellant and Z.R.'s father be found to be unfit.

¶ 15 At the conclusion of the dispositional hearing, the circuit court found that the appellant remained unfit, stating that it could not "ignore the other three cases." However the court found

Z.R.s' father to be fit and awarded him guardianship and custody of Z.R. "on a temporary basis pending the case." The court ordered Z.R.'s father to undergo parenting classes and ordered him not to employ corporal punishment of any kind. This appeal followed.

¶ 16 ANALYSIS

¶ 17 After a circuit court finds a child to be neglected by a parent, the Juvenile Court Act requires the court to hold a dispositional hearing to determine the parent's fitness, the legal custody and guardianship of the child, and future actions that are in the best interest of the child. *In re Madison H.*, 215 Ill. 2d 364, 374 (2005); see 705 ILCS 405/2-27(1) (West 2010). During this dispositional proceeding (which does not result in the termination of parental rights), the State must prove that a parent is unfit by the preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 225, 238 (2001).

¶ 18 We may reverse a circuit court's finding of unfitness only if it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 489 (2002). That occurs only when "the opposite conclusion is clearly evident" or the circuit court's determination is "unreasonable, arbitrary, or not based on the evidence presented." (Citations omitted.) *D.F.*, 201 Ill. 2d at 489; see also *In re S.D.*, 2011 IL App (3d) 110, 184, ¶ 33 (2011) (ruling that a circuit court's decision is against the manifest weight of the evidence if "the facts clearly demonstrate that the court should have reached the opposite result"). We give deference to the circuit court as the finder of fact because it "is in the best position to observe the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re J'America B.*, 346 Ill. App. 3d 1034, 1045 (2004); see also *D.F.*, 201 Ill. 2d at 498-99. Accordingly, we "must not substitute [our] judgment for that of the trial court

regarding the credibility of witnesses, the weight to be given the evidence, or the inferences to be drawn." *J'America B.*, 346 Ill. App. 3d at 1045; see also *D.F.*, 201 Ill. 2d at 499.

¶ 19 Applying this deferential standard, we cannot conclude that the circuit court's finding that the appellant is unfit to care for Z.R. is against the manifest weight of the evidence. The appellant stipulated that she was found unfit in three prior cases in Peoria County and that she had not completed services that would allow her to regain custody of Z.R.'s siblings. She also stipulated that Z.R.'s father, her paramour at the time, struck Z.R.'s five-year-old half sister and two-year-old half brother on the buttocks with a belt, causing substantial bruising. In addition, Tony Groh, the appellant's former husband, beat the appellant's daughter. As the case workers recognized, this evidence showed that the appellant had a pattern of becoming romantically involved with men who abused her children.

¶ 20 The appellant also had a pattern of lying to case workers regarding important matters that could affect the welfare of her children. For example, she falsely told a case worker that Z.R.'s father had never used corporal punishment on any of her children. She also falsely told case workers on several occasions that she was no longer involved with Z.R.'s father. Then, when confronted with proof that she had been seeing Z.R.'s father, the Appellant would make excuses, shift the blame to others, or admit that she had lied because she "thought she would get in trouble." Moreover, the appellant did not open up during counseling sessions and was reluctant to talk about matters that her counselors believed were important. The case workers were understandably concerned with the appellant's lack of candor and her unwillingness to take responsibility for her bad decisions. They recommended that the circuit court find the appellant unfit and order her to undergo counseling to help her to assume greater personal responsibility,

improve the way she manages relationships with others, address the choices she has made in male partners, and "enter[] into a deeper level of personal honesty where she addresses her history, current behavior and plans for her future." The case workers also noted that the appellant seemed "unable to safely attend to" all four of her children simultaneously and that she was "working on" this problem. Z.R.'s guardian *ad litem* agreed with the case workers that the appellant should be found unfit.

¶ 21 Taken together, this evidence strongly supports the circuit court's decision. Although the appellant had completed parenting classes and made some progress toward regaining the custody of her other children, there was ample evidence to support the circuit court's conclusion that she remained unfit at the time of the dispositional hearing. Accordingly, the circuit court's finding of unfitness was not against the manifest weight of the evidence.

¶ 22 The appellant argues that, because the circuit court found Z.R.'s father to be fit and awarded him custody of Z.R., the court's finding that the appellant is unfit is "logically inconsistent." Specifically, the appellant maintains that the circuit court's finding that Z.R. was neglected was based entirely upon the appellant's relationship with Z.R.'s father. Thus, the appellant contends that because Z.R.'s father was deemed fit, the appellant must also be deemed fit because her relationship with him (and her dishonesty about her continued involvement with him) could not present any danger to Z.R. We disagree. The wisdom of the circuit court's finding that Z.R.'s father is fit and its decision to award him custody of Z.R. is not before us. The sole issue that we must decide in this appeal is whether the circuit court's finding that *the appellant* is unfit is against the manifest weight of the evidence. For the reasons discussed above, we find that the circuit court's decision is amply supported by the evidence.

¶ 23 Moreover, contrary to the appellant’s argument, the appellant’s relationship with Z.R.'s father is not the only evidence supporting the circuit court’s findings of neglect and unfitness. The evidence showed that the appellant was married to a man who beat her daughter before she became involved with Z.R.'s father. In addition, the appellant lied to the case workers about the physical abuse of her daughter and other matters that could affect the welfare of her children, and she refused to open up during counseling sessions or otherwise acknowledge and take responsibility for correcting some of her bad decisions. Further, the case workers found that the appellant had difficulty caring for all of her children simultaneously.

¶ 24 Thus, although we do not pass upon the wisdom of the circuit court’s decision to find Z.R.'s father fit and to award him custody of Z.R., that decision does not bar a finding that the appellant is an unfit parent. This conclusion is further supported by the fact that Z.R.'s father and the appellant are in materially different positions. Unlike the appellant, Z.R.'s father has never been found unfit and had not been offered any services prior to the dispositional hearing. Thus, regardless of the wisdom of the trial court's finding that Z.R.'s father is fit, its finding that the appellant is unfit is neither logically inconsistent nor against the manifest weight of the evidence.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 27 Affirmed.