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2012 IL App (3d) 120085-U

Order filed September 24, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> A.D.,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
A Minor,) Peoria County, Illinois,
)
(The People of the State of Illinois,)
) Appeal No. 3-12-0085
Petitioner-Appellee,) Circuit No. 11-JA-171
)
v.)
)
Andre D.,) Honorable
) Mark E. Gilles,
Respondent-Appellant.)) Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's ruling that respondent was dispositionally unfit was not against the manifest weight of the evidence.

¶ 2 Andre D. (Respondent) is the father of the minor child, A.D. On January 18, 2012, the court entered an order adjudicating the minor a ward of the court and finding respondent dispositionally unfit. Respondent filed a timely notice of appeal challenging the court's ruling of

dispositional unfitness. We affirm.

¶ 3

FACTS

¶ 4 On August 1, 2011, the State filed a juvenile petition alleging the minor, A.D., who was born on July 26, 2011, was neglected due to an injurious environment. The petition alleged respondent resided with the mother of the minor, Tracina J. (Tracina), and respondent had a history of domestic violence directed at Tracina. The petition alleged on June 18, 2010, respondent broke into Tracina's home and hit her on the head with a cell phone; on June 20, 2010, respondent bit Tracina on the cheek, and on September 13, 2010, Tracina claimed respondent hit her in the face while they were together on a public street. The petition further asserted respondent had a criminal history that included a 2002 conviction for unlawful possession of a controlled substance, a 2006 conviction for aggravated assault of a police officer, and a 2007 conviction for unlawful possession of a controlled substance. The petition also claimed Tracina was previously found to be an unfit parent in four other cases. Respondent denied the allegations of domestic violence, but stipulated the State could establish his prior criminal history.

¶ 5 Pursuant to court order on August 1, 2011, the court placed the minor in temporary shelter care. The adjudicatory hearing took place on September 28, 2011 and October 12, 2011, and included testimony from three police officers concerning the acts of domestic violence set out in the juvenile petition. The State also admitted photographs of Tracina's injured face from respondent's acts of striking her with a cell phone and biting her cheek. Tracina testified that respondent had not yet successfully completed domestic violence classes, but they were still involved in a relationship.

¶ 6 The trial court noted there was "significant troubling domestic violence" in the ongoing relationship between Tracina and respondent. The trial court found the State proved all of the allegations in the petition by a preponderance of the evidence and warned respondent that if he did not want his parental rights to the minor terminated at some point in the future, he had to "tell[] the truth."

¶ 7 On December 22, 2011, Delayna Dobbins, the caseworker, submitted a dispositional report indicating respondent resided with his mother and Tracina did not have stable housing. According to the report, respondent attended therapy sessions, weekly domestic violence treatment groups, visited with the minor weekly, and appeared to be bonded to the infant. Moreover, the report indicated the Department of Children and Family Services (DCFS) had not been involved with any of the respondent's four other children produced by other relationships.

¶ 8 In the report, the caseworker reported she spoke with an anonymous informant over the phone on November 29, 2011. The caller claimed Tracina had been moving to different locations with the minor for two months. Consequently, the caseworker suspected the minor was actually living with Tracina, at various transitory locations, rather than with the foster parent pursuant to the court order entered on August 1, 2011.

¶ 9 When the caseworker subsequently investigated the foster home, she discovered the minor's "crib sheet had no wrinkles in it, there were none of the infants [*sic*] dirty clothes in the home, there were no dirty diapers in the trash can." After the foster parent admitted to the caseworker that "she couldn't take care of [the minor] anymore," the caseworker officially removed the minor from the foster parent's residence. The caseworker advised the court that during the same time frame, respondent misinformed the caseworker he was visiting with the

minor in the foster home. Nonetheless, the caseworker recommended respondent be found fit.

¶ 10 The dispositional hearing took place on January 18, 2012. Respondent testified he was in the process of completing his domestic violence classes, but had not completed them as of the dispositional hearing. According to respondent's testimony, the minor did not stay with Tracina, but he admitted Tracina's mother would watch the minor even though the minor was staying with the foster parent.

¶ 11 First, the court found that respondent was not credible because he had been dishonest with the court. The court also considered the respondent's past problems with domestic violence and his criminal history. The trial court found both parents unfit, made the minor a ward of the court, and granted guardianship to DCFS. Respondent appeals.

¶ 12 ANALYSIS

¶ 13 On appeal, respondent argues the trial court's ruling regarding dispositional unfitness was against the manifest weight of the evidence. The State responds the court correctly found respondent dispositionally unfit.

¶ 14 At a dispositional hearing, the trial court is called upon to determine whether the minor's parent is fit to care for the minor. *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001). The State must prove parental unfitness for dispositional purposes pursuant to section 2-27 of the Juvenile Court Act of 1987 (705 ILCS 405/2-27 (West 2010)) by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 256-57 (2001) (citing *In Interest of Lakita B.*, 297 Ill. App. 3d 985, 994 (1998)).

¶ 15 A trial court's determination regarding dispositional unfitness will be reversed "only if the findings of fact are against the manifest weight of the evidence or if the trial court committed an

abuse of discretion by selecting an inappropriate dispositional order.” *In Interest of T.B.*, 215 Ill. App. 3d 1059, 1062 (1991) (citing *In re Jackson*, 81 Ill. App. 3d 136, 138 (1980); *In Interest of Nitz*, 76 Ill. App. 3d 15, 20 (1979)). A reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result. *In Interest of T.B.*, 215 Ill. App. 3d at 1062.

¶ 16 In this case, respondent admitted to a criminal history, and officers testified concerning various incidents of domestic violence directed toward Tracina. It was undisputed that respondent was attending therapy and domestic violence classes, but had not completed those classes at the time of the dispositional hearing. See *In re R.R.*, 409 Ill. App. 3d 1041, 1046 (2011) (stating “[c]ompleting some required services does not, in and of itself, make a parent fit, particularly where other required services are still ongoing”). Moreover, while the couple denied they were residing together as alleged in the juvenile petition, Tracina admitted during the adjudicatory hearing that she and respondent were involved in a relationship.

¶ 17 Respondent testified the minor was staying with the foster parent, and he visited with the minor at the foster parent's home. However, according to the caseworker, there was no indication the minor was actually residing in the foster home. Therefore, the trial court's determination that respondent had not been truthful with the court was appropriate. The court's finding that the State proved the allegations of the juvenile petition by a preponderance of the evidence is supported by this record. Accordingly, the trial court's ruling finding respondent dispositionally unfit was proper.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.