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2017 IL App (3d) 160698-U

Order filed September 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

In re E.C.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a minor,)	Peoria County, Illinois.
)	
(THE PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	Appeal No. 3-16-0698
Petitioner-Appellee,)	Circuit No. 16-JA-44
)	
v.)	
)	
ERIC C.,)	Honorable
)	Kirk D. Schoenbein,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Holdridge and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* A trial court's conclusion that a father was dispositionally unfit was affirmed on appeal because the trial court's findings that the father showed poor judgment and a lack of commitment, had a lack of credibility, and had history of domestic violence were not against the manifest weight of the evidence.

¶ 2 The respondent father, Eric C., appealed from a trial court's dispositional order finding him unfit and ordering that the minor, E.C., remain a ward of the court.

¶ 3 FACTS

¶ 4 On February 17, 2016, the State filed a petition alleging that E.C. was neglected due to an environment injurious to his welfare. According to the petition, E.C. was born with cocaine in his system, his mother had previously been found unfit with no subsequent finding of fitness, one of his two possible fathers (not Eric C.) had previously abused E.C.'s sibling and had a criminal history, and his other possible father (Eric C.) had a criminal history. After a hearing, the trial court entered an order for the temporary shelter case of E.C.

¶ 5 Eric C. appeared in court and requested a DNA test, which revealed that he was the legal father of E.C. (hereinafter "the father"). Subsequently, the father filed a motion to modify or vacate the shelter care order, seeking the return of the E.C. and also answered the juvenile petition. After a hearing, the trial court adjudicated the minor neglected, finding that it was not the result of physical abuse but because the minor tested positive for cocaine at birth. The adjudication order noted that the trial court found that the father did not contribute to the injurious environment.

¶ 6 At the dispositional hearing, a number of documents were submitted to the trial court, including a dispositional report and an addendum, an integrated assessment, a service plan, and some police reports. The addendum to the dispositional report, dated October 6, 2016, indicated that the father was currently in jail and did not attend the administrative case review that day. Since he did not attend, the father did not schedule a home visit with E.C., and the father had not timely responded to the caseworker's messages to schedule the home visit. The father had visits with E.C. every Tuesday and his interactions were appropriate.

¶ 7 The father testified at the dispositional hearing that he was having trouble with his voicemail and did not get the messages at the time. The father testified that he missed calls from the caseworker on October 25, 26, and 27, but called the caseworker back and left a message on October 27. The father then had contact with the caseworker on October 31 and set up a visit for November 1, which was later cancelled because of the minor. The father testified that he had a work telephone number, but he did not give that number to the caseworker. Also, the caseworker had called to set up a home visit, and the father had declined without an explanation.

¶ 8 The father testified that he was indicted for domestic violence involving the minor's mother that occurred on June 17, 2016, but he had not been convicted. He was more recently arrested for violating an order of protection. He had a domestic violence conviction from 2012, after which he completed a domestic violence class.

¶ 9 The trial court found the father unfit, basing its decision on the father's poor judgment, lack of credibility, history of domestic violence, and lack of commitment. The father's motion to vacate shelter care was denied. The father appealed, arguing that the trial court erred when it found him dispositionally unfit. The State contends that the trial court's determination was not against the manifest weight of the evidence.

¶ 10 ANALYSIS

¶ 11 Under the Juvenile Court Act of 1987, once a trial court adjudicates a minor to be neglected, there must be a dispositional hearing. 705 ILCS 405/2-21(2) (West 2012). Section 2-27 of the Act provides that the court may place the minor outside of his or her parental home if the court determines that the parent is unfit or unable to care for the minor. 705 ILCS 405/2-27 (West 2012). The State must prove parental unfitness for dispositional purposes by a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. We will reverse a

trial court's dispositional determination 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. *Id.* ¶ 23.

¶ 12 After reviewing the record, we find that the trial court's conclusion that the father was dispositionally unfit, based on the father's poor judgment, lack of credibility, history of domestic violence, and lack of commitment, was not against the weight of the evidence. The trial court questioned the father's commitment to the minor, citing the father's failure to be accessible and available to the caseworker. Also, the father told the caseworker that he had not used drugs in over 20 years, but had tested positive for cocaine within the last two years. The father had a history of domestic violence, including a conviction in 2012 and a recent arrest for domestic violence involving the minor's mother. Since the trial court's findings of fact were not against the manifest weight of the evidence, we affirm the finding of dispositional unfitness.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Peoria County is affirmed.

¶ 15 Affirmed.