NO. 4-10-0865 Order Filed 3/11/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.B., a minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
V.	)	No. 10JA47
YVONNE BOARD,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court. Justices Pope and McCullough concurred.

ORDER

Held: Respondent, who was found an unfit parent, was not denied equal protection under the law when the trial court placed custody and guardianship of the minor with his father who lived out-of-state and did not implement a reasonable visitation plan.

A.B., born July 11, 2008, was adjudicated neglected and named a ward of the court pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq*. (West 2008)). Custody and guardianship of A.B. were removed from his mother, Yvonne Board, respondent in this case, and placed with A.B.'s father, Laurence Board, who lives out-of-state. Respondent appeals, arguing her equal-protection rights were violated because the trial court did not implement a reasonable visitation plan prior to placing custody and guardianship of A.B. with his father as the court would have been required to do under Section

609(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/609(a) (West 2008)). We affirm.

I. BACKGROUND

A.B. is the minor child of respondent, Yvonne Board, and Laurence Board. Respondent and Laurence are currently married, but dissolution proceedings are pending in Champaign County case No. 10-D-207. Prior to these proceedings, A.B. resided with respondent in Illinois. Laurence lives in Iowa.

On July 2, 2010, the State filed a petition for adjudication of neglect, alleging A.B. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2008)). The petition argued A.B. was exposed to an environment injurious to his welfare when he resides with respondent, in that said environment exposes A.B. to substance abuse (count I). A.B. was placed in the temporary custody of the Department of Children and Family Services (DCFS).

On July 6, 2010, the State filed an amended petition for adjudication of neglect and shelter care, requesting a shelter-care hearing. On September 1, 2010, the State filed a second amended petition for adjudication of neglect and shelter care which added a second count, alleging A.B. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act because his environment exposed him to domestic violence (count II).

On September 15, 2010, respondent stipulated to count I of the original petition. The State moved to dismiss both the amended petition and the second amended petition, and the trial court adjudicated A.B. neglected.

On October 20, 2010, at the dispositional hearing, the trial court considered the evidence offered at the adjudicatory hearing, the prior adjudicatory order, and the recommendations of both the guardian *ad litem* and counsel. The court found it in the best interest of A.B. to be adjudged neglected and named a ward of the court. The court found the respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline A.B. The court further found continued residence with respondent was contrary to the health, safety, and best interests of A.B. The court placed custody and guardianship of A.B. with his father, Laurence, finding A.B.'s father fit, willing, and able to exercise guardianship and custody of A.B., and such placement was in A.B.'s best interest. Custody and guardianship of A.B. were removed from respondent. The court then vacated wardship of A.B. and closed the case.

This appeal followed.

II. ANALYSIS

On appeal, respondent does not argue that the trial court erred in granting custody and guardianship in A.B.'s

father, who lives in Iowa. Instead, respondent argues that she was denied equal protection under the law because the court did not implement a reasonable visitation plan as it would have been required to do prior to a child's removal from the state by a custodial parent under section 609(a) of the Dissolution Act. Respondent argues she is similarly situated to a parent whose child is removed from the state by a custodial parent under the Dissolution Act. We disagree.

Section 609(a) of the Dissolution Act provides a trial court may allow a custodial parent to remove his or her child from the State of Illinois if such a move is in the best interests of the child. 750 ILCS 5/609(a) (West 2008). Because it is in a child's best interest to have a healthy and close relationship with both parents and other family members (see *In re Marriage of Krivi*, 283 Ill. App. 3d 772, 777, 670 N.E.2d 1162, 1166 (1996)), a decision to grant a petition for removal must include a reasonable visitation schedule that will preserve and foster the child's relationship with the noncustodial parent. *Ford v. Marteness*, 368 Ill. App. 3d 172, 178, 857 N.E.2d 355, 360 (2006).

In contrast, the Juvenile Court Act does not require a reasonable visitation schedule to be in place prior to placing a minor in accordance with the Juvenile Court Act (705 ILCS 405/2-27 (West 2008)).

"The constitutional guarantee of equal protection [mandates] that the government treat similarly situated individuals in a similar manner." *In re D.W.*, 214 Ill. 2d 289, 313, 827 N.E.2d 466, 482 (2005). Unless a fundamental right is implicated, a statute that treats similarly situated individuals differently will be upheld so long as it bears a rational basis to a legitimate government interest. *Id.* at 310, 827 N.E.2d at 480.

A parent who is dispositionally unfit, unwilling, or unable to care for a child under the Juvenile Court Act is not similarly situated to a parent who is fit, willing, and able to care for a child. See *Montgomery v. Roudez*, 156 Ill. App. 3d 262, 269, 509 N.E.2d 499, 504 (1987) (finding parties pursuing remedies under the Juvenile Court Act and the Dissolution Act are not similarly situated because a proceeding pursuant to the former is predicated upon the well-being of the minor, while a proceeding under the latter is predicated upon a determination of the minor's best interests). As such, an equal-protection argument cannot be maintained. However, even if an argument could be levied that an unfit parent is similarly situated to a fit parent, a rational basis exists for the disparate treatment under the Juvenile Court Act and the Dissolution Act.

The state has a compelling interest in the safety and welfare of children. *D.W.*, 214 Ill. 2d at 311, 827 N.E.2d at

481. To that end, the stated purpose of the Juvenile Court Act is

> "to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal[.]" 705 ILCS 405/1-2(1) (West 2008).

However, "when one parent is determined to be unfit under the Juvenile Court Act, and wardship arises, the other parent's rights are superior to the State's interest." *In re C.L.*, 384 Ill. App. 3d 689, 696, 894 N.E.2d 949, 955 (2008).

Under the Juvenile Court Act, if a child has been removed from the custody or guardianship of a parent, it is because his or her safety or welfare was in jeopardy. Visitation with the parent who was deemed unfit may not be an appropriate choice for a child adjudicated abused or neglected under the Juvenile Court Act. The legislature saw fit not to mandate such

a requirement. To the contrary, under the Dissolution Act, neither parent has been deemed unfit, and the child's safety and welfare are not at issue. Because it is ultimately in a child's best interest to maintain a healthy relationship with both fit parents, a reasonable visitation plan is required under the Dissolution Act before a custodial parent is permitted to remove a child from the state. A rational basis exists for the distinction under the Juvenile Court Act and the Dissolution Act. Therefore, respondent has not been denied equal protection under the law.

Further, we note that respondent's parental rights are still in tact. Any concerns over visitation plans would be appropriately addressed in the dissolution proceedings pending in Champaign County case No. 10-D-207.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.