2011 IL App (4th) 110320-U

Filed 9/8/11

NO. 4-11-0320

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: G.V., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 10JA21
JENA MANNING,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in removing custody of child from her mother. A preponderance of the evidence supported the trial court's judgment.

¶ 2 In February 2011, the State file a supplemental petition for adjudication of wardship of G.V. (born January 29, 2011), the minor child of respondent, Jena Manning. After a hearing the same day, the trial court found G.V. was dependent. The court made G.V. a ward of the court, appointed the Department of Children and Family Services (DCFS) as her guardian and removed custody from respondent.

¶ 3 Respondent appeals, contending the trial court erred by removing custody of G.V. from her. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The State's February 4, 2011, supplemental petition alleged G.V. was (1)

neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(B) (West Supp. 2011)) in that her environment was injurious to her welfare when she resides with respondent due to respondent's mental disability, (2) neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West Supp. 2011)) in that her environment is injurious to her welfare when she resides with respondent due to respondent's failure to correct the conditions which resulted in a prior adjudication of parental inability to exercise guardianship and/or custody of the minor's half-sibling S.M. in this same case and (3) dependent under section 2-4(1) (b) of the Juvenile Court Act (705/405/2-4(1)(b) (West Supp. 2011)) in that G.V. was without proper care because of respondent's mental disability and the incarceration and lack of involvement of her father.

¶ 6 A shelter-care hearing was held the same day the petition for wardship was filed. On January 31, 2011, DCFS received a hotline call reporting G.V. was born to respondent on January 29, 2011, and respondent, age 25, had two other children already in placement "due to serious mental health issues." While attempting to locate respondent and G.V., the child protection investigator for DCFS reviewed the department's files in regard to respondent. The investigator learned DCFS had taken S.M., respondent's older child (born February 18, 2010) into protective custody on March 15, 2010, based on her pediatrician's "concern about [respondent]'s condition and presentation," which included exhaustion and lack of focus on S.M. Ultimately, after a June 2010 hearing, the trial court found S.M. was not neglected but was dependent due to respondent's mental disability. At a July 2010 dispositional hearing, the court made S.M. its ward and appointed DCFS her guardian. Respondent appealed that decision and this court affirmed. *In re S.M.,* No. 4-10-0581 (2010) (unpublished order under Supreme Court

Rule 23).

¶ 7 The investigator also discovered the Illinois Office of State Guardian is the guardian of respondent's person (In re Guardianship of Jena Manning, Champaign County case No. 07-P-261) and respondent's oldest child, W.M., the product of rape, had been in the custody of court-approved guardians since November 2008.

¶ 8 On February 3, 2011, DCFS took protective custody of G.V. at a scheduled visit between respondent and S.M. Jonathan Vicenik, respondent's boyfriend since September 2010, and now fiancé, accompanied respondent to the visitation and, according to respondent's DCFS caseworker, had a very calming effect on her and appeared to be a capable person. Vicenik is not G.V.'s father although the baby was given his last name and he would like to adopt her.

¶ 9 In November 2010, respondent completed a psychological evaluation with Dr. Richard Kujoth. Dr. Kujoth diagnosed respondent as suffering with delusional disorder, persecutory and grandiose; history of bipolar disorder, abuse as an adult; sexual abuse as adult; sexual abuse and neglect as a child; borderline personality disorder, reading disorder, mathematics disorder and disorder of written expression. Dr. Kujoth reported respondent admitted living in an unsafe neighborhood with a drug dealer living upstairs and presented a "pervasive" pattern of instability in her interpersonal relationships, self-image and affect, consistent with borderline personality disorder.

¶ 10 Respondent receives social security payments for her mental disabilities. She was adopted at the age of one month, the daughter of a 15 year old who abused alcohol. Respondent's relationship with her adoptive parents is currently strained as her older child S.M., was placed in their custody and care by DCFS.

¶ 11 At an early age, respondent was diagnosed with several learning disabilities and had multiple psychiatric hospitalizations, along with placements in residential treatment and group homes throughout her childhood and adolescence. Respondent admits a traumatic history of rape and sexual molestation, as well as being tortured as a young child. None of these incidents involved her adoptive parents but she blames them for not protecting her better and she claims she never received counseling for her trauma. Respondent is currently in counseling with Kevin Elliott.

¶ 12 Elliott, a licensed clinical professional counselor, testified he has been a counselor to respondent, off and on, since she was a child and he worked with her at Pavilion Psychiatric Hospital. Respondent most recently began counseling with Elliott again in 2007. She was not consistent and would take breaks from counseling. Since the fall of 2010 Elliott has met with respondent on a weekly basis. She has been making progress in her counseling and is not as guarded and is more responsible. She has also been making progress in addressing her history of trauma and in recognizing what triggers her post-traumatic reactions and how to deal with those. Elliott opined respondent was currently capable of parenting only with substantial support from others.

¶ 13 The trial court found probable cause to believe G.V. was neglected and dependent as alleged and temporary guardianship and custody was awarded to DCFS. At the adjudicatory hearing on March 8, 2011, respondent admitted the allegation of dependency in that G.V. was without proper care because of respondent's mental disability. The State withdrew the other two counts.

¶ 14 At the April 1, 2011, dispositional hearing, DCFS submitted a report of a mental

evaluation performed on respondent by Dr. Judy Osgood on January 25, 2011, four days before G.V. was born. No other evidence was produced. Dr. Osgood, a licensed clinical psychologist, had been asked by Elliott to evaluate respondent for a second opinion on her ability to parent S.M. after Dr. Kujoth's evaluation. Dr. Osgood recited an extensive history of mental illness, noting respondent had been admitted to as many as 12 to 14 mental-health facilities, including psychiatric hospitals, residential placements, group homes and independent living programs. She diagnosed respondent as suffering from post-traumatic stress disorder, adjustment disorder, cynical mood disorder, and learning disabilities. Dr. Osgood also found indications respondent suffered with fetal alcohol syndrome since birth, consistent with her learning disabilities and history of emotional and behavioral problems.

¶ 15 Dr. Osgood strongly recommended respondent be provided with treatment and services optimizing her potential to safely and responsibly parent S.M. She recommended parenting classes, as well as individual counseling. Dr. Osgood recommended respondent demonstrate progress for a year prior to returning S.M. to her custody in the following areas: ability to safely and responsibly parent S.M.; maintain stability in personal and interpersonal functioning; maintain a safe, stable, and responsible lifestyle; have no involvement with high-risk adults (drug addicts, criminals, sexual abusers, *et cetera*); and develop and maintain a support system of responsible, law-abiding, and supportive adults.

¶ 16 After hearing arguments, in which respondent's counsel argued G.V. be made a ward of the court, the trial court found respondent unable to care for G.V. and found G.V. to be dependent and made her a ward of the court. The court then placed custody and guardianship of G.V. with DCFS and ordered respondent's visitation with her be supervised. Respondent appeals

that portion of the trial court's order removing custody of G.V. from her.

¶ 17 II. ANALYSIS

¶ 18 The Juvenile Court Act authorizes a trial court to remove a child from the custody of his parents if the court determines the parent is unfit or unable to care for, protect, train, or discipline the minor and the health, safety, and best interest of the minor would be jeopardized if the minor remains in the custody of the parent. 705 ILCS 405/2-27 (West Supp. 2011). The trial court's finding must be supported by a preponderance of the evidence and those findings will not be disturbed unless they are against the manifest weight of the evidence. *In re D.W.*, 386 Ill. App. 3d 124, 139, 897 N.E.2d 387, 400 (2008). "A finding is against the manifest weight of the evidence only if the opposite result is clearly evident." *In re A.W., Jr.*, 231 Ill. App. 2d 241, 254, 897 N.E.2d 733, 740 (2008).

¶ 19 Respondent argues this case came into being because of DCFS's ongoing involvement with respondent and S.M. and not due to any specific evidence of neglect or abuse of G.V. She contends, due to her new relationship with Vicenik, she was properly caring for G.V., if only for a few days. Respondent further contends the involvement of DCFS in regard to either S.M. or G.V. was due solely to her mental-health conditions. When severely stressed, respondent is likely to focus on herself above others, and she has a history of unstable relationships.

¶ 20 Respondent argues she is addressing these issues with Elliott and making progress. Elliott stated respondent was capable of parenting with support and a safety plan. She contends Vicenik is providing her support and she has a safety plan with him. The evidence indicates Vicenik is an intelligent, responsible young man and she also has support available

through DCFS. She contends the trial court's removal of custody of G.V. from her was against the manifest weight of the evidence.

¶ 21 This case shares the same case number as that of respondent's other child, S.M. The dispositional hearing as to S.M. was held in July 2010. At that time, respondent was already pregnant with G.V. although she never told her DCFS caseworker about her pregnancy and denied it when she asked directly about the pregnancy. In July 2010, respondent had been found incapable of parenting a five-month-old baby. Six months later, in January 2011, G.V. was born. During those six months, respondent had been late in starting her required parenting classes because she had stated she was going to London, England, to visit the man she stated was then her fiancé. Respondent did not actually make the trip to England but also did not complete parenting classes.

¶ 22 Sometime in the six-month period between July 2010 and January 2011, respondent met Vicenik. She was already pregnant with G.V. by a different man, who, at the time G.V. was born, was incarcerated on charges of predatory criminal sexual assault of a child, his prior girlfriend's three-year-old daughter.

¶ 23 The trial court went to great lengths to state its rulings were no reflection on Vicenik, who appeared to be a stable, responsible person who held a steady job, was dedicated to respondent and willing to not only parent but adopt G.V. As the court noted, it had no power over Vicenik to monitor what he did or did not do. The court had to concern itself with respondent.

¶ 24 Vicenik's involvement in respondent's life was a positive. Her newfound dedication to counseling with Elliott was also positive. However, the various mental-health

diagnoses made in regard to S.M.'s case remained and were added to by new evaluations in regard to G.V.'s case. Elliott testified respondent was not yet in a position to parent a child without significant support. Dr. Osgood also testified respondent was not currently equipped to care for S.M. let alone a newborn such as G.V. Vicenik seemed to offer the needed support but it was too early to make that determination. Respondent was working to address her mental-health issues but had not made much progress yet. The issues which had been identified in regard to S.M.'s case only months prior to G.V.'s birth had not been addressed. The most recent permanency hearing in S.M.'s case was held on October 5, 2010, and the trial court found respondent had neither made efforts nor progress toward the goal of returning S.M. to her care.

¶ 25 Accordingly, we find the trial court's custody finding was not against the manifest weight of the evidence.

¶ 26 III. CONCLUSION

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

¶ 28 Affirmed.