

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 110610-U

Filed 12/2/11

NO. 4-11-0610

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.D., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JA27
RUKIYA DAVIS,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The trial court did not err in its visitation order. The lack of a Department of Children and Family Services service plan did not prejudice respondent and the issue has been forfeited.

¶ 2 In May 2011, the State filed a petition for adjudication of wardship of K.D. (born November 25, 2010), the minor child of respondent mother, Rukiya Davis. Respondent exercised sole custody of K.D. and she was alleged to have neglected and abused K.D. Temporary custody of K.D. was placed in the Illinois Department of Children and Family Services (DCFS).

¶ 3 In July 2011, after respondent had stipulated to two of the seven allegations of neglect against her, respondent was found to be unfit and DCFS was appointed custodian and guardian of K.D. Respondent appeals from the order of neglect contending (1) the trial court

erred in entering an order restricting respondent's visits without a specific period of time governing the restrictions and (2) no case or service plan was filed by DCFS as required by the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-25 (West 2010) (eff. July 1, 2011)). We affirm.

¶ 4

I. BACKGROUND

¶ 5

On May 1, 2011, the Champaign police department received a report of an infant in a car seat left at the side of the road at an intersection in Champaign. When the officers arrived, they were informed Chontrale Smith, father of the infant, was on his way to the scene on foot. When Smith arrived at the scene, he informed the police officers respondent called him at home to go pick up their child. He stated respondent sometimes got tired of caring for the child and would just leave him with Smith or one of his relatives. Approximately one week before this incident, respondent left K.D. on the sidewalk in front of the home of Smith's parents in the rain. Respondent was arrested and charged with endangering the life and health of a child. When respondent was arrested, marijuana residue was found in her car.

¶ 6

On May 2, 2011, the State filed a petition for adjudication of wardship alleging K.D. (1) was abused because respondent created substantial risk of physical injury to him by other than accidental means likely causing death, disfigurement, impairment of physical or emotional health and/or loss or impairment of his bodily functions (705 ILCS 405/2-3(2)(ii) (West 2010)); (2) was neglected because respondent had abandoned him (705 ILCS 405/2-3(1) (West 2010)); (3) was neglected because respondent abandoned him without a proper plan of care (705 ILCS 405/2-3(1)(a) (West 2010)); (4) was neglected because his environment is injurious to his welfare when he resides with respondent in that his environment exposes him to

risk of physical harm (705 ILCS 405/2-3(1)(b) (West 2010)); (5) was neglected because his environment is injurious to his welfare when he resides with respondent in that his environment exposes him to substance abuse; (6) was neglected because his parents, respondent, and Smith, do not provide him with adequate food, clothing, and shelter (705 ILCS 405/2-3(1)(a) (West 2010)); and (7) was neglected because his parents, respondent and Smith, do not provide remedial care recognized as necessary for his well-being (705 ILCS 405/2-3(1)(a) (West 2010)).

¶ 7 The hearing was continued to May 3, 2011. Both parents stipulated to probable cause and immediate and urgent necessity and K.D. was placed in the temporary custody of DCFS. Visitation between either parent and K.D. was ordered to be supervised by DCFS or an agency it designated.

¶ 8 On May 25, 2011, an adjudicatory hearing was held. Respondent admitted and stipulated to counts III (neglect due to abandonment of K.D. without a proper plan of care) and count V (neglect due to environment injurious to K.D.'s welfare when he resides with respondent in that his environment exposes him to substance abuse). The case was continued to June 10, 2011, for a continued adjudicatory hearing as to Smith.

¶ 9 On June 10, 2011, allegations of neglect in counts III through VI were found against Smith. The dispositional hearing was held on July 8, 2011. Both parents were found to be unfit and K.D. was adjudicated neglected. Custody and guardianship were placed with DCFS. A home and background report was filed by Lutheran Social Services of Illinois and reviewed by the trial court. The report indicated respondent, while not currently participating in any services, was in the process of completing a substance abuse screening. She had been referred for a domestic-violence assessment and would be referred to individual counseling and a parenting

class. The report further indicated respondent had been receiving two hours of visitation with K.D. per week supervised by Lutheran Social Services at their office. She had not missed a visit and was timely and appropriate during visits. The court ordered visitation for respondent to be supervised by DCFS or an agency it designates. She was further ordered to comply with the service plans provided for her and maintain regular visits with K.D. This appeal followed.

¶ 10

II. ANALYSIS

¶ 11

A. Order of Protection

¶ 12

Respondent contends the trial court erred in its visitation order by restricting her to DCFS supervised visits without stating the restriction was for a specific period of time. She notes section 2-25 of the Act (705 ILCS 405/2-25 (West 2010)) provides a court may make an order of protection in assistance of or as a condition of any other order under the Act. However, the conditions ordered must be for a specific period of time. In this case, no time period was specified in the court's order in regard to visitation.

¶ 13

The trial court's order requiring visitation be supervised by DCFS or its designated agency was not an order of protection. Although some of the provisions of section 2-25 touch on ways visitation orders may be conditioned, none of them were done by the court here. The court left to DCFS the times and amount of visitation allowed to respondent. It only required the visits be supervised by DCFS, something that was clearly in K.D.'s best interests given the fact K.D. was abandoned at an intersection.

¶ 14

Respondent relies on *In re P.F.*, 265 Ill. App. 3d 1092, 638 N.E.2d 716 (1994) where the trial court gave DCFS discretion to suspend visits when the parents engaged in inappropriate behavior. This limitation on visitation was found to be of the type covered by an

order of protection and was impermissible without the inclusion of a specific period of time.

P.F., 265 Ill. App. 3d at 1107-08, 638 N.E.2d at 726-27. However, the instant case involved no provision for suspension of visitation.

¶ 15 Further, *P.F.* was decided prior to amendments to the Act providing a trial court "shall enter any other orders necessary to fulfill the service plan, including but not limited to *** (ii) restraining orders controlling the conduct of any party likely to frustrate the achievement of the goal, and (iii) visiting orders." 705 ILCS 405/2-23(3)(ii), 3(iii) (West 2010). These provisions do not require a specific time period be included. Following these new provisions of the Act, the court in *In re Taylor B.*, 359 Ill. App. 3d 647, 651-52, 834 N.E.2d 605, 608-09 (2005), found *P.F.* to be inapplicable and even a court-ordered suspension of visitation "until some of this is resolved" did not require a specific time frame as it fell under sections 2-23(3)(ii) and (iii) rather than section 2-25 (the section dealing with orders of protection).

¶ 16 The trial court did not err in failing to provide a specific time frame for requiring DCFS to supervise respondent's visits with K.D.

¶ 17 B. Case Plan

¶ 18 Respondent argues this case should be remanded for the preparation and filing with the trial court of a written case plan or service plan. Section 2-10.1 of the Act requires DCFS, or its designated agency, prepare and file a case plan with the court within 45 days of temporary placement of a child following a shelter care hearing. 705 ILCS 405/2-10.1 (West 2010). The shelter-care hearing in this case occurred on May 2, 2011, and the dispositional hearing was held on July 8, 2011. Nothing in the record indicates either a case plan or service plan was filed prior to the dispositional hearing at which respondent was admonished failure to

follow the service plan could result in termination of her parental rights. She contends she was deprived of nearly a month of knowing what was in the service plan.

¶ 19 Respondent has forfeited this argument by failing to raise it in the trial court. At the dispositional hearing, she was advised she needed to complete "the service plans" or "risk termination of [her] parental rights." The court then set a review hearing for October 7, 2011, at which time respondent's progress would be reviewed. Respondent was asked if she understood this and she replied she did. In addition, respondent's attorney stated to the court respondent recognized she has "some services" to complete. At no time did respondent or her counsel bring to the attention of the court any lack of a service plan.

¶ 20 Further, respondent was not prejudiced by the absence of a service plan at the time of the dispositional hearing. The report of Lutheran Social Services indicated the services already being provided to respondent and her reported "wish" to complete them. She was already in the beginning stages of participating in services, and knew what services she was expected to engage in and complete. We assume a formal service plan was prepared shortly after the dispositional hearing. Although preparation of a formal service plan may have been behind schedule, the services which would be required under the plan were mentioned at the dispositional hearing and had already begun. Respondent was not prejudiced and we see no need to remand this case.

¶ 21 III. CONCLUSION

¶ 22 The trial court's order specifying respondent's visitation be supervised by DCFS was not an order of protection requiring a time frame be specified, and the issue of the lack of the preparation and filing of a service plan within the time frame provided by section 2-10.1 of the

Act has been forfeited. We affirm the trial court's judgment.

¶ 23 Affirmed.