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NOS. 4-11-0929, 4-11-0930, 4-11-0931 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.W., K.H., and C.H., Minors.	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	Nos. 11JA68
KIMBERLY WASHKOWIAK,	)	11JA69
Respondent-Appellant.	)	11JA70
	)	
	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's decision to (1) award guardianship to the children's respective fathers and (2) dismiss the State's petitions for adjudication of warship after finding the children's mother unfit.

¶ 2 On May 27, 2011, the State filed three separate petitions for adjudication of wardship, alleging that D.W. (born April 20, 2001) (case No. 11-JA-68), K.H. (born September 14, 2008) (case No. 11-JA-69), and C.H. (born July 27, 2010) (case No. 11-JA-70) were neglected because their environment was injurious to their welfare due to their mother's substance-abuse issues (705 ILCS 405/2-3(1)(b) (West 2010)). Shortly thereafter, the trial court, treating the cases as consolidated, conducted a shelter-care hearing, which the children's mother, respondent, Kimberly Washkowiak, and their respective fathers attended. At the conclusion of

that hearing, the court placed the children in the temporary custody of the Department of Children and Family Services (DCFS). Pursuant to the court's order, DCFS compiled a client-service plan.

¶ 3 In September 2011, the trial court (1) adjudicated all three children neglected, (2) appointed DCFS as their guardian, and (3) entered an order, which required respondent to (a) comply with the terms of the DCFS service plan and (b) correct the conditions that led to the children's removal. As part of its order, the court set an October 6, 2011, dispositional hearing. Following a hearing on that date, the court entered a dispositional order, (1) awarding custody and guardianship to the children's respective fathers and (2) closing all three cases.

¶ 4 Respondent appeals, arguing that the trial court erred by dismissing the State's petitions for adjudication of wardship and granting custody of the children to their respective fathers. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 On May 27, 2011, the State filed three separate petitions for adjudication of wardship, alleging that D.W. (case No. 11-JA-68), K.H. (case No. 11-JA-69), and C.H. (case No. 11-JA-70) were neglected because their environment was injurious to their welfare due to their mother's substance-abuse issues (705 ILCS 405/2-3(1)(b) (West 2010)). Shortly thereafter, the trial court, treating the cases as consolidated, conducted a shelter-care hearing, which respondent and the children's respective fathers attended. At the conclusion of that hearing, the court placed the children in the temporary custody of the DCFS. Pursuant to the court's order, DCFS compiled a client-service plan.

¶ 7 In September 2011, the trial court (1) adjudicated all three children neglected, (2)

appointed DCFS as their guardian, and (3) entered an order, which required respondent to (a) comply with the terms of the DCFS service plan and (b) correct the conditions that led to the children's removal. As part of its order, the court set an October 6, 2011, dispositional hearing. Following the presentation of evidence and argument at the October 6, 2011, dispositional hearing, the court found, in part, as follows:

> "Let's remember why [these children] came into care: [respondent], *** in a five-month period[,] consumed 1,066 pain pills[.] ***.
>
> Her own doctor reports having concerns about her possible prescription-medication abuse.
>
> There's no question at the time of the hearing that [respondent] has been abusing prescription medicines for a long time. She still denies that that has happened. In the face of overwhelming evidence, she denies that there is any abuse of prescription medications.
>
> With a pending [driving-under-the-influence charge] based on drugs, with the children present, she denies abuse of prescription medications. Having been found passed out on her couch *** when one of the young children indicated he couldn't wake mommy, she denies abusing prescription medications. When being stopped from consuming 17 Vicodin at one time, she denies abusing prescription medication.

That by itself indicates her unfitness. The fact that she even, in light of the incredibly overwhelming evidence, continues per the dispositional report to deny that any of this is her fault ***. ***.

That total lack of appreciation for the seriousness of her problem is what makes her dangerous to her children. I don't doubt for one minute she loves her children. I don't doubt for one minute they love her. But it's clear from the evidence that she has no appreciation for the seriousness of her problem with prescription medication.

If the case were going to continue with the children in care but being made wards of the Court, then regardless of what the assessments have been she would have to get some sort of substance-abuse treatment.

* * *

The substance-abuse issue–and now let me get to the point I was getting to when I digressed. If, in fact, you maintain you have no substance-abuse issue, then there is no reason for me to be keeping the case open so that you can get treatment for substance abuse. That's the only reason we're here. And if you steadfastly maintain, 'I have no substance-abuse issue,' then there's no reason for me to keep the case open, because you're not going to

participate, and you're not going to invest in substance-abuse treatment. In your opinion, there is no problem, in light of the incredibly overwhelming evidence ***. There were other people who testified at the hearing. So the only reason to leave the case open would be for substance-abuse treatment, which you deny you need. So it's an interesting dilemma ***.

I have to find that you're in need of substance-abuse treatment and order that there be another assessment to get you treatment for something which you deny exists and maintain your denial with no hope of success because you have no problem. There is no prescription problem.

***

So there is a finding that [respondent] is unfit, unable, although willing, to care for the children because of a serious prescription-medication substance-abuse problem which interferes with her ability to properly and adequately parent. Her refusal to acknowledge the existence of the problem further contributes to the findings.

The fathers are fit. ***

Custody and guardianship of all three children are placed with the respective *** fathers, and there is no further reason to keep this case open, and, therefore, the case is dismissed.

There's no reason for custody and guardianship to be placed with [DCFS]. That will be the order of the Court."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Respondent argues that the trial court erred by dismissing the State's petitions for adjudication of wardship and granting custody of the children to their respective fathers. Specifically, respondent contends that the court erred because its order dismissing the children's cases left her "without services or an active plan and goals to be reunited with her children." Although respondent's argument is well taken, we disagree with her contention on the facts of this case. Indeed, as to anyone other than the children's fathers, she has a superior right to parental guardianship and control. However, when, as here, mom is unfit and unwilling to participate in her own rehabilitation, and dad is fit and willing to take on the responsibility of raising his child, mom's parental rights–which she shares equally with dad–must yield to the child's best interest.

¶ 11 Respondent relies exclusively on *In re C.L.*, 384 Ill. App. 3d 689, 894 N.E.2d 949 (2008)–in which the court concluded, in part, that the trial court erred by granting guardianship of the children to their father because the children were not first adjudicated wards of the court as required by section 2-27(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-27(a)(1) (West 2006))–to support her assertion that the trial court erred by dismissing the State's three petitions involving D.W., K.H., and C.H. Accordingly, respondent's assertion requires this court to determine whether the trial court in this case complied with the statutory requirements of the Juvenile Court Act, which is a question of law that we review *de novo*. *In re Vincente G.*, 408

Ill App. 3d 678, 682, 946 N.E.2d 437, 440 (2011).

¶ 12 In *C.L.*, the trial court (1) awarded the children's father custody and guardianship following a dispositional hearing and (2) closed the children's cases. *C.L.*, 384 Ill. App. 3d at 694, 894 N.E.2d at 953-54. The children's mother appealed. The Third District of this appellate court held that because the trial court did not make the children wards of the court as required by section 2-27(a)(1) of the Juvenile Court Act–the trial court "verbally announced *** in open court" that it would *not* make the children wards of the court (*C.L.*, 384 Ill. App. 3d at 694, 894 N.E.2d at 954)–and thus the parental rights of both parents remained intact, it could not designate one parent or the other as guardian. *C.L.*, 384 Ill. App. 3d at 696, 894 N.E.2d at 956. Accordingly, the court (1) affirmed the trial court's decision to close the children's cases, while simultaneously (2) vacating the trial court's decision to grant guardianship of the children to their father. *C.L.*, 384 Ill. App. 3d at 698, 894 N.E.2d at 957.

¶ 13 Section 2-27(1)(a) of the Juvenile Court Act (705 ILCS 405/2-27(a)(1) (West 2010)) allows the trial court, after making a child a ward of the court, to place the child in the custody of the child's other parent, as follows:

> "(1) If the court determines and puts in writing the factual basis supporting the determination of whether the *** guardian *** of a minor adjudged a ward of the court are unfit or are unable *** to care for, protect, train or discipline the minor *** and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her *** guardian ***, the court may ***:

(a) place the minor in the custody of a

suitable relative *** as legal custodian or guardian."

¶ 14 The trial court in this case, unlike the trial court in *C.L.*, specifically made the children wards of the court before finding (1) respondent unfit and (2) the children's respective fathers fit. The court thereafter awarded custody of the children to their respective fathers. Our review of the record shows that after evaluating evidence and hearing arguments, the court found that it would be in the children's best interest for their respective fathers–who had equal right to parental control of their children–to be their guardians. The court based that finding on the fact that respondent had significant prescription-drug-abuse issues, which she was utterly unwilling to acknowledge, let alone address. Thus, in the court's judgment, continuing to invest in respondent's client-service plan would have been fruitless, a waste of valuable resources, and not in the children's best interest. The record fully supports the court's findings in that regard.

¶ 15 In closing, we note that because the trial court closed these juvenile cases without terminating respondent's parental rights, respondent is free to file a petition under the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607 (West 2010)), seeking visitation as to D.W., K.H., and C.H. Under the Marriage Act, a noncustodial parent is entitled to reasonable visitation, *unless* visitation would seriously endanger the physical, mental, moral, or emotional health of the children. 750 ILCS 5/607(a) (West 2010).

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the trial court's judgment.

¶ 18 Affirmed.