

NOTICE
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2012 IL App (4th) 120256-U

Filed 7/19/12

NO. 4-12-0256

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.Y., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 11JA13
CAROL LYNCH,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the trial court had the authority to enter an order restricting the noncustodial parent's visitation with the minor child, and determined that such restriction was in the child's best interests after considering the evidence presented, the court did not err in entering an order of protection setting forth reasonable restrictions for visitation.
- ¶ 2 Respondent, Carol Lynch, appeals from the trial court's order restricting her visitation rights to her son. The order was entered subsequent to a dispositional order in these neglect proceedings. The dispositional order found respondent unfit, unable, or unwilling to care for her son, C.Y., born February 27, 2002. Later, the court vacated the wardship of the child and granted respondent's ex-husband and C.Y.'s father, John Lynch, custody and guardianship of the child. The visitation restriction was included in the court's order granting the father's petition for the entry of an order of protection. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On February 25, 2011, the State filed a petition for adjudication of neglect for C.Y. pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2010)). The State alleged C.Y. was not receiving proper education as required by law while in respondent's care. The petition named Lynch as C.Y.'s "presumptive legal father" and "unknown" as his "putative biological father." Respondent and Lynch were married at the time of C.Y.'s birth, making Lynch C.Y.'s legal father. See 750 ILCS 45/5(a)(1) (West 2010).

¶ 5

On May 24, 2011, the trial court conducted an adjudicatory hearing where (1) an employee from the Regional Office of Education and (2) two truancy-related employees, and (3) a social worker from the Champaign School District testified regarding C.Y.'s numerous unexcused absences from school. All four witnesses said they each offered respondent assistance in getting C.Y. to school, but she declined the offers and refused to acknowledge a problem. Within the first two months of the 2010-11 school year, C.Y. had 16 absences, 8 1/2 of which were unexcused, and 13 days tardy. In the 2007-08 school year, C.Y. had 35 absences and 28 days tardy; in the 2008-09 school year, he had 29 absences and 48 days tardy; and in the 2009-10 school year, he had 45 absences and 23 days tardy.

¶ 6

Respondent testified on her own behalf that C.Y. was living with Lynch and his girlfriend and attending a school in Tuscola, Illinois. She said C.Y. did not like attending Kenwood Elementary, a school within the Champaign School District, when he resided with her. In fact, she said, he was terrified. According to respondent, the principal at Kenwood had told C.Y. that all teachers at Kenwood were aliens. Respondent blamed this event for C.Y.'s truancy. She said getting C.Y. to school was "a battle" every day even though they lived directly across the street from the

school. He would often leave the house, pretending he was going to school, but instead, he would hide and never enter the school building.

¶ 7 Respondent testified that, during the 2007-08 school year, when C.Y. was in kindergarten, she noticed problems with his teacher. She said C.Y. told her "things that *** [she] should have listened to, that [she] should have paid more attention to," though she did not elaborate. Respondent also believed C.Y. had difficulty getting to school due to his iron deficiency, which, she said, made him "really tired."

¶ 8 Respondent denied being notified of "any truancy meetings" but recalled meeting with the principal, who "came up with [] the idea of having [C.Y.] come to school from 9 to 12." She said the school sent C.Y. "home almost every single day" because he misbehaved. She said his behavior problems increased in severity when she and Lynch separated in April 2010.

¶ 9 Randi Cozad, respondent's daughter, testified that she and her two daughters resided with respondent. Cozad witnessed respondent trying to get C.Y. to school. She said C.Y. would "throw fits, he'd cry, he'd scream, do everything he could to get out of going to school." When he made it to school, he was sent home early "almost every day."

¶ 10 Mary Lentz, respondent's mother, also testified she was familiar with C.Y.'s truancy problems. Respondent sent C.Y. to live with Lentz for a few weeks during the fall of 2010 in an effort to improve his attendance. Lentz said it improved but only for a couple of days. She said the principal called her "to pick him up every day."

¶ 11 After considering the evidence and arguments of counsel, the trial court entered an adjudicatory order, finding C.Y. neglected as a "chronic truant." The court ordered the Illinois Department of Children and Family Services (DCFS) to prepare a dispositional report. That report,

filed on June 24, 2011, set forth the following. The caseworker opined that respondent met only minimal parenting requirements and that she seemed to place her own needs above those of her children. For example, for two weeks, she refused to provide the necessary paperwork to get C.Y. enrolled in school in Tuscola. However, once C.Y. began attending, he enjoyed it there. He wanted to remain with Lynch and was "planning on attending [school] everyday." Based on the improvement in his environment, he was able to stop taking his iron supplement and his medication for his attention-deficit-hyperactivity disorder.

¶ 12 The dispositional report further indicated that respondent's criminal record consisted of three convictions for assault. Additionally, she had pending an offense of driving on a revoked license.

¶ 13 At the conclusion of the report, DCFS recommended that C.Y. remain with Lynch and attend school in Tuscola. C.Y. had requested he be allowed to stay overnight with respondent on weekends, and DCFS concurred. The guardian *ad litem* recommended custody remain with Lynch but believed supervised visits with respondent would better serve C.Y.'s interest.

¶ 14 On June 30, 2011, the trial court conducted a dispositional hearing. No party presented evidence. After considering the dispositional report, the guardian *ad litem*'s report, and recommendations of counsel, the court entered a dispositional order, (1) making C.Y. a ward of the court and adjudicating him a neglected minor, and (2) finding respondent unfit, unwilling, and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline the minor. The court found Lynch to be fit, willing, and able to exercise custody of C.Y. The court ordered guardianship be placed with DCFS and custody placed with Lynch. The court allowed respondent visitation to be determined at DCFS's discretion.

¶ 15 In a September 2011 permanency-review report, DCFS noted that respondent had been sentenced to 120 days of home confinement upon a conviction of driving on a revoked license. This sentence was, in effect, a detriment to C.Y. because his visits with respondent required him to travel 45 minutes one way, visit for 1 hour, and travel back. He was away from home for three hours at a time. Prior to the imposition of respondent's sentence, she traveled to C.Y. Otherwise, C.Y. was doing well in school in Tuscola, he attended every day, and did not have any behavioral issues.

¶ 16 In October 2011, respondent participated in a psychological evaluation. The psychologist determined that respondent suffered from "cognitive deficits," depression, and anxiety. He recommended, *inter alia*, she participate in counseling, continue taking antianxiety medication, and participate in visits with C.Y.

¶ 17 In a February 2012 permanency-review report, the caseworker noted that in December 2011, respondent had been unsuccessfully discharged from the Change Program at Cognitive Works due to poor attendance, and she had failed to follow up with individual counseling. She had been released from home confinement in December 2011, but she was arrested for retail theft in January 2012. Since her release from home confinement, she missed five of eight visits with C.Y. The caseworker claimed respondent "does not show an interest in spending time with her son, or making him a priority in her life for an hour a week. She would prefer that he see her in her home; however[,] he is traveling 45 miles one way. It takes him about three hours to complete a one[-]hour visit."

¶ 18 According to the caseworker, C.Y. was "doing very well at his father's home. He ha[d] the structure and discipline that he was lacking in his mother[']s home. [C.Y.] [was] attending school daily and [was] making good grades. [C.Y.] [was] proud of himself and often talk[ed] to this

worker about his academic accomplishments."

¶ 19 The caseworker reported she had spoken with C.Y. about the status of visits with respondent. He told the worker he enjoyed his visits and wanted to visit with respondent more. In fact, he was upset when respondent missed visits. Despite his request, the caseworker could not recommend unsupervised or overnight visits because of respondent's emotional struggles, her poor parenting skills, and her inability to get C.Y. to school should she be allowed to have him overnight. Additionally, according to Lynch, respondent had threatened to flee Illinois with C.Y. When the caseworker confronted respondent with this statement, she reportedly said she was "just joking."

¶ 20 The caseworker recommended that Lynch maintain custody and guardianship of C.Y. and that the case be closed, leaving respondent with a "final finding of unfit, unwilling, and unable to care for" C.Y. The guardian *ad litem* agreed with DCFS's recommendation.

¶ 21 In March 2012, on the day of a permanency hearing, Lynch filed a motion for a protective order, requesting that respondent's visitation with C.Y. be restricted to supervised only based upon her repeated threats to flee with C.Y. from the State of Illinois. She threatened Lynch that he would never see C.Y. again. At the hearing, Lynch testified he did not get along well with respondent and, based upon her repeated comments, he feared she would permanently remove C.Y. from the State if given the opportunity. During her testimony, respondent said she was never serious and was being "sarcastic" when she made the remarks. She said she would not take C.Y. away from Lynch because doing so "would be destroying him."

¶ 22 After considering the evidence and arguments of counsel, the trial court granted Lynch's motion, finding respondent could maintain only supervised visits with C.Y. for no longer than 6 hours in any 24-hour period and not beyond 9 p.m. She was prohibited from removing C.Y.

from the State of Illinois. In addition, the court agreed with the recommendations of DCFS and the guardian *ad litem*, and entered an order vacating the wardship of C.Y. This appeal followed.

¶ 23

II. ANALYSIS

¶ 24 Respondent claims the trial court erred by applying the wrong standard when it restricted her visitation with C.Y. She claims section 607(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/607(a) (West 2010)), which governs a modification of a parent's visitation rights in the context of an order of protection, applies in this case. Section 607(a) utilizes a serious-endangerment standard in restricting visitation.

¶ 25 Contrary to respondent's claim, the State maintains the trial court applied the proper standard under section 2-23(2) of the Juvenile Court Act (705 ILCS 405/2-23(2) (West 2010)), which governs dispositional orders reflecting an order of protection under section 2-25 of the Juvenile Court Act. We agree with the State, as this case was not a proceeding governed by the Dissolution Act. *Cf., Heldebrandt v. Heldebrandt*, 251 Ill. App. 3d 950, 957 (1993) (the trial court did not utilize correct standard of serious endangerment when it restricted the father's visitation with his children upon his petition to modify filed under section 607 of the Dissolution Act (750 ILCS 5/607 (West 1992))).

¶ 26

Section 2-25(1) of the Juvenile Court Act provides as follows:

"The court may make an order of protection in assistance of or as a condition of any other order authorized by this Act. The order of protection shall be based on the health, safety and best interests of the minor and may set forth reasonable conditions of behavior to be observed for a specified period." 705 ILCS 405/2-25(1) (West 2010).

Thus, according to these statutory sections, the trial court had the authority to enter an order of protection under these circumstances and as part of these neglect proceedings. See 705 ILCS 405/2-23(2) (West 2010). The court entered the order of protection, which limited respondent's visitation with C.Y., to coincide with or as a condition of the dispositional order entered in June 2011.

¶ 27 "[W]e will reverse a trial court's dispositional determination only if the court's findings of fact are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order." *In re Taylor B.*, 359 Ill. App. 3d 647, 650 (2005). In *Taylor B.*, a neglect case proceeding under the Juvenile Court Act, the court entered a dispositional order, which included the suspension of respondent father's visitation with the minor child because the child feared him. The father appealed the court's order. *Taylor B.*, 359 Ill. App. 3d at 650.

¶ 28 In its decision, the Third District in *Taylor B.* determined that the trial court had the authority to restrict the father's visitation with the child after legal custody and guardianship had been transferred to DCFS. *Taylor B.*, 359 Ill. App. 3d at 652. The court referred to section 1-3(13) of the Juvenile Court Act, which provides the following definition:

" 'Residual parental rights and responsibilities' means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation (which may be limited by the court in the best interests of the minor as provided in subsection (8)(b) of this Section)." 705 ILCS 405/1-3(13) (West 2010).

¶ 29 Similar to the trial court's decision in *Taylor B.*, the trial court here restricted respondent's visitation rights based on the best interests of the minor. The court considered the evidence presented at the hearing on Lynch's petition for an order of protection, which included Lynch's testimony that he and respondent had an acrimonious relationship and that she had repeatedly threatened to permanently remove C.Y. from the State of Illinois.

¶ 30 Although respondent denied the sincerity of the threat, we cannot say the court's decision was against the manifest weight of the evidence or an abuse of discretion. The manner in which respondent's visitation was restricted was not so harsh as to deny her beneficial access to her son. Instead, the restriction was fashioned to allow respondent quality time with C.Y., while at the same time, supporting the improvements he had made in Lynch's custody. In fact, the trial court noted the order was

"necessary and in [C.Y.]'s best interest given the reasons leading to the finding of [respondent] being unfit. Also considering the representations here in the written report, the admitted threats to remove [C.Y.] from the custody of the custodial parent, and which, although may have been withdrawn at a later time, the court thinks remain in seriousness and indicate a misunderstanding of—by [respondent] as in her role as a noncustodial parent."

Based on this record, we conclude the court's order restricting respondent's visitation was fashioned in the interest of the child's health, safety, and welfare and was not an unreasonable restriction of respondent's residual visitation rights.

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.