2013 IL App (4th) 130462-U

NO. 4-13-0462

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 24, 2013
Carla Bender
4th District Appellate
Court, IL

In re: B.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA4
BRYCE LADAGE,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: After adjudicating a child to be neglected, making her a ward of the court, and finding only one of the parents to be dispositionally unfit under section 2-27(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-27(1) (West 2012)), the court had statutory authority to split guardianship from custody by awarding guardianship to the Illinois Department of Children and Family Services (DCFS) while placing the child in the custody of the parent whom the court had not found to be dispositionally unfit.

¶ 2 Respondent, Bryce Ladage, appeals a dispositional order, in which the trial court appointed DCFS to be the guardian of his daughter, B.L. After finding B.L. to be neglected, making her a ward of the court, and removing her from the custody of her mother, Trisha Smith, the court placed B.L. in respondent's custody. But the court appointed DCFS as B.L.'s guardian. Respondent contends that in the absence of a finding pursuant to section 2-27(1) that he, like Smith, was dispositionally unfit, the court lacked statutory authority to appoint DCFS—or anyone else—as the child's guardian.

¶ 3 We disagree with that argument, and we adhere to the holdings of *In re M.P.*, 408

Ill. App. 3d 1070, 1074 (2011), and *In re E.L.*, 353 Ill. App. 3d 894, 898 (2004)): after adjudicating a child to be neglected, making her a ward of the court, and finding only one of the parents to be dispositionally unfit under section 2-27(1) (705 ILCS 405/2-27(1) (West 2012)), the trial court has authority to split guardianship from custody by awarding guardianship to DCFS while placing the child in the custody of the parent whom the court did not find to be dispositionally unfit. Therefore, we find no abuse of discretion in the dispositional order (see *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991)), and we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 B.L. was born to respondent and Smith on September 20, 2008. Respondent and Smith are divorced. They had joint legal custody of B.L. Smith had primary physical custody, and respondent had visitation rights.

¶ 6 On February 21, 2013, the State filed a petition to adjudicate B.L. a neglected minor and to make her a ward of the court. The petition had two counts, both of which alleged that when B.L. resided with Smith, she was in an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2012)). Count I alleged that the home environment exposed B.L. to the risk of sexual abuse. Count II alleged that Smith allowed B.L. to have "contact with a registered sex offender."

¶ 7 On February 22, 2013, the trial court held a temporary custody hearing, in which the court awarded temporary custody of B.L. to respondent.

¶ 8 On April 2, 2013, the trial court held a final pretrial hearing, in which Smith stipulated to count II and the State dismissed count I. Respondent waived his right to an adjudicatory hearing. After admonishing both parents, the court accepted Smith's stipulation to

count II and accepted respondent's waiver of an adjudicatory hearing.

¶ 9 On May 2, 2013, in a dispositional hearing, the trial court adjudged B.L. to be neglected and made her a ward of the court. The court found Smith to be "currently unfit and unable to act as a custodial parent," but the court found respondent to be "fit, able and willing to exercise custody." Therefore, the court awarded custody of B.L. to respondent.

¶ 10 Nevertheless, the trial court removed the guardianship of B.L. from both parents and appointed DCFS as her guardian. The court explained it had three reasons for making DCFS the guardian. First, the guardianship would give Smith the opportunity to reunite with the child. Second, DCFS should manage visitation. Third, DCFS could offer services to respondent.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Respondent argues that when the trial court adjudicates a child to be neglected, makes the child a ward of the court, finds only one of the parents to be dispositionally unfit (see 705 ILCS 405/2-27(1) (West 2012)), and places the child in the custody of the parent whom the court did not find to be dispositionally unfit, the court lacks authority to remove the guardianship of the child from the custodial parent and to appoint DCFS as the child's guardian, thereby splitting guardianship from custody. In support of that argument, he cites *In re C.L.*, 384 Ill. App. 3d 689, 696 (2008), and *In re K.L.S.-P.*, 383 Ill. App. 3d 287, 295 (2008).

¶ 14 Both of those cases are distinguishable in their facts. In *C.L.*, the trial court awarded guardianship of the minors to their father and closed the case without making the minors wards of the court. *C.L.*, 384 Ill. App. 3d at 693. In *K.L.S.-P.*, after finding the mother to be dispositionally fit (*K.L.S.-P.*, 383 Ill. App. 3d at 295), the trial court awarded both custody

and guardianship to DCFS (*id.* at 289). In the present case, by contrast, the trial court made B.L. a ward of the court, and the court split guardianship from custody rather than awarding DCFS both guardianship and custody.

¶ 15 The appellate court has repeatedly held that once the trial court finds a child to be neglected and makes the child a ward of the court, the court can split guardianship from custody, appointing DCFS as the guardian and putting the child in the custody of the parent who is dispositionally fit. *M.P.*, 408 Ill. App. 3d at 1074; *E.L.*, 353 Ill. App. 3d at 898; see also *In re T.L.C.*, 285 Ill. App. 3d 922, 926 (1996) ("We recognize that the court can generally split the guardianship and custody of a minor.").

¶ 16 Granted, even though *K.L.S.-P.* is distinguishable, it contains language that arguably supports respondent's appeal. The opinion says: "In order to make a child a ward of the court, the court must determine that the parent is dispositionally unfit to care for the child." *K.L.S.-P.*, 383 Ill. App. 3d at 294. That statement, however, is incorrect. The first order of business in the dispositional hearing is to decide whether to make the neglected child a ward of the court. 705 ILCS 405/2-22(1) (West 2012); *C.L.*, 384 Ill. App. 3d at 693. Only after the child is made a ward of the court may the court consider a disposition (705 ILCS 405/2-22(1) (West 2012)), and the parent's dispositional fitness is relevant to the disposition (705 ILCS 405/2-27(1) (West 2012)). As the Third District itself said several months after it issued *K.L.S.-P.*: "[T]he court's consideration of the need for guardianship and whether a parent is dispositionally unfit must be preceded by the court's finding that it is in the best interest of the minor to become a ward of the court." *C.L.*, 384 Ill. App. 3d at 693 (citing 705 ILCS 405/2-27(1)(a) (West 2006)).

¶ 17 III. CONCLUSION

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

¶ 19 Affirmed.