

NOTICE
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2014 IL App (4th) 140607-U
NO. 4-14-0607

FILED
December 2, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: O.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 01JA77
JAMES MYERS,)	
Respondent-Appellant.)	
)	
)	
)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly placed custody and guardianship of the minor with the Department of Children and Family Services.

¶ 2 Respondent father, James Myers, appeals the order placing custody and guardianship of his son, O.M. (born April 17, 1999), with the Department of Children and Family Services (DCFS). Myers maintains the trial court's finding his son's best interests were jeopardized if he remained in respondent's custody is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This family first became involved with DCFS in October 2001. That same

month, O.M. was adjudged neglected. In May 2002, custody and guardianship of O.M. was placed with DCFS.

¶ 5 In March 2005, the trial court appointed O.M.'s maternal grandmother, Patricia Barnhart, as O.M.'s guardian. Patricia had a Ph.D. in educational psychology and was a licensed clinical psychologist. Wardship was terminated and the case was closed.

¶ 6 In July 2013, Patricia moved to reopen the case, reinstate wardship, and vacate her guardianship of O.M. At the hearing on the motion, Patricia, aged 81, testified she could no longer act as O.M.'s guardian due to her age and failing health. According to Patricia, O.M. wanted to live with his parents, respondent and Gayne Barnhart. Patricia testified O.M. excelled in school and had his parents' support. Patricia believed respondent and Gayne were "very able to raise" O.M.

¶ 7 In December 2013, at the dispositional hearing, the trial court vacated Patricia's guardianship and found respondent and Gayne fit, able, and willing to exercise custody and guardianship. DCFS was appointed guardian of O.M.

¶ 8 On May 23, 2014, the State moved to declare respondent unfit and unable to parent O.M. The State alleged O.M. told a psychologist he was overly stressed and needed "immediate psychological help." The State alleged respondent kicked Gayne out of their home after she sustained a leg injury. According to the State, Gayne reported O.M. had taken Vicodin from her and recently begged her for more Vicodin. In addition, Champaign police officers had investigated reports by a neighbor that O.M. was killing animals, shooting BB guns at a neighboring property, and hacking items in his backyard with a machete.

¶ 9 That same day, the trial court entered a warrant for the apprehension of O.M. The

court found O.M.'s behavior may endanger himself or others and the circumstances of his home life may endanger his welfare.

¶ 10 On May 27, 2014, the trial court held a hearing on the issue of temporary custody. The State presented the testimony of two witnesses: Barbara Traylor, a child-protection specialist and investigator for DCFS; and Sally Corby, an advocate coordinator with Champaign County court-appointed special advocates (CASA).

¶ 11 Traylor testified she was assigned the case in April 2014, after allegations respondent was "spiraling out of control, very delusional, [and] paranoid." Traylor also heard reports O.M. was taking drugs, making drugs into capsules, and possibly shooting animals in the backyard. The investigation into those matters remained pending.

¶ 12 According to Traylor, as part of her investigation, she spoke with O.M., respondent, and Gayne. O.M. denied any drug use. O.M. denied shooting animals, but he admitted shooting at a target. Traylor observed a target in the backyard. She saw "air guns." During Traylor's four meetings with O.M., O.M. seemed very paranoid and guarded.

¶ 13 Traylor testified, when they were attempting to execute the warrant for O.M.'s apprehension, respondent exhibited extreme paranoia and delusional thinking. O.M. "was actually doing some of the same type of behaviors that [respondent] was doing." For example, respondent placed a video on multiple websites showing the entire execution of the apprehension warrant, including showing police officers and a DCFS worker. Respondent, in the video, articulated "everybody *** was trying to take" O.M. O.M. acted in a similar manner by taking photographs of legal documents and sharing them with the community. During Traylor's first interview of O.M., O.M. attempted to make an audio recording of the interview. O.M. continued

his efforts despite being told to stop.

¶ 14 Traylor testified she spoke with the "anonymous reporter" regarding the allegations. This individual had concerns about O.M.'s possible use of Vicodin and the lacing of certain capsules with marijuana. The reporter had additional concerns about respondent's "extreme paranoia and delusional thinking."

¶ 15 According to Traylor, when she met with O.M. and respondent at the same time, O.M. mirrored his father's behavior. He used similar words and was also paranoid and delusional. Traylor believed respondent had a strong influence on O.M. She did not believe Gayne's influence was the same. Gayne, when with O.M. and respondent, was "extremely passive." Traylor opined Gayne lacked the ability to step in and protect O.M. if necessary.

¶ 16 Traylor testified, after the warrant was executed, she met with the caseworker at Carle Hospital. When Traylor first interacted with O.M., he was taking photographs. He sent the photographs to his parents and posted them online. O.M. was placed with a family member over the weekend.

¶ 17 On cross-examination, Traylor explained her conclusion respondent was delusional. Traylor stated respondent told her someone named "Amber" made the report that led to O.M.'s apprehension. Despite being told "Amber" was not involved, respondent fixated on "Amber" as "out to get him and his family." Respondent and O.M. threw "legal jargon" at Traylor and were "very confrontational." Traylor was not comfortable sitting in the same room as O.M. and respondent. Traylor testified she did not see a gun or dead animals in respondent's yard.

¶ 18 Corby testified, in April 2014, Gayne called her with concerns regarding O.M.'s

well-being. Gayne was in a rehabilitation center with a broken leg that had been surgically repaired. Gayne was concerned about how O.M. was doing in respondent's care.

¶ 19 After speaking with Gayne, Corby contacted O.M.'s school and spoke to the counselor. The counselor reported O.M., on his own initiative, sought the school social worker. O.M. stated he needed some counseling and psychological help. The part-time social worker was unfamiliar with O.M. and his history. The social worker asked O.M. to go home and speak with his father and to talk to her the next day.

¶ 20 Corby testified the school told her about concerns neighbors had articulated regarding O.M. Neighbors were concerned O.M. used weapons in the backyard and engaged in "sort of general terrorizing" in the neighborhood. Corby contacted DCFS about the reports.

¶ 21 According to Corby, she met with Gayne, respondent, O.M., and others on May 14, 2014. O.M. and respondent were angry with Corby about a statement in the most recent CASA report and did not want her in the meeting. Corby did not make the statement. At that meeting, O.M. said he needed psychological help. O.M. reported he felt lost and hopeless and stated he wanted counseling. O.M. said he "can't keep going on right now." He signed a consent form for treatment, but he had not begun treatment as of the date of Corby's testimony. Since spring break, O.M.'s grades dropped. Although at the previous court hearing there was testimony O.M. was "doing very well in school," the most recent report was that O.M. had two F's, a D, and some C's.

¶ 22 Corby testified, on May 22, 2014, she received a call from O.M.'s school. The counselor reported the police were there to arrest O.M. The arrest resulted from a video of him in a tree house in his backyard. In the video, O.M. shot at animals and hit a piece of wood with a

hatchet.

¶ 23 Corby testified, at the May 14 meeting, O.M. had difficulty putting sentences together. His movements seemed "a little jerky." Corby was aware of reports O.M. may have taken his mother's Vicodin. Corby opined respondent was a negative influence on O.M.

¶ 24 On cross-examination, Corby testified she believed the video that led to O.M.'s arrest was taken by an anonymous reporter.

¶ 25 The trial court concluded probable cause existed to believe O.M. was neglected. The court concluded Gayne was unable to control respondent's and O.M.'s negative behaviors. The court ordered O.M. undergo a psychological evaluation within 60 days and begin counseling immediately. The court determined it was "a matter of immediate and urgent necessity for the safety and protection of" O.M. he be placed in care. Temporary custody of O.M. was granted to DCFS.

¶ 26 A redispositional hearing was held in June 2014. The record shows a redispositional report was prepared by DCFS for the hearing. According to the report, respondent had been taking a number of medications over the years "to slow down his obsessive compulsive and manic behavior." He had been seeing a physician for psychotropic-medication management. About 18 months before the report, respondent decided to stop taking medication because it made him tired, gain weight, and depressed. Respondent was barred from seeing his usual physician after respondent secretly audiotaped the physician. In April 2014, respondent and Gayne reported respondent was back on his medication.

¶ 27 DCFS further reported respondent presented "as highly guarded, angry, defensive, and paranoid." These qualities were "often exacerbated" when respondent interacted with DCFS,

the police, the courts, Gayne's family, and others he perceived to be a threat. DCFS called respondent "a very caring and loving father to O.M." After Gayne's leg injury, respondent was O.M.'s sole caretaker. Respondent was "completely supportive of [O.M.] getting into mental health services and in fact was advocating for that just prior to the warrant of apprehension being executed." DCFS concluded as follows: "Oftentimes outsiders are put off by [respondent's] demeanor but if they would look further, they would see that while he is definitely unconventional, [respondent] has his son's best interest at heart."

¶ 28 According to the report, O.M. tested in the gifted range at school. His grades were usually in the A range, until the last quarter of his eighth-grade year, when his grades began to fall. Stressors in O.M.'s life included DCFS involvement, his mother's and grandmother's health issues, and a break up with a girlfriend. O.M. received weekly therapeutic support. O.M. was improving. O.M. missed his parents and wanted "very much to return to their full-time care." O.M. felt safe and well cared for while in their custody.

¶ 29 By written order, the trial court found respondent unfit and unable for reasons other than financial circumstances alone to care for, protect, train, or discipline O.M. and the health, safety, and best interests of O.M. would be jeopardized if he remained in respondent's custody. The court ordered services aimed at reunifying the family.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 On appeal, respondent maintains the trial court erred by finding O.M.'s best interests would be jeopardized if O.M. remained in his custody. Respondent argues the court failed to examine his abilities before making this ruling. Respondent emphasizes the lack of

evidence showing he will not do what is asked of him and the evidence of O.M.'s successes at school. Respondent further emphasizes the court's findings were based on a video, which amounts to "double hearsay [*sic*]," and argues Traylor lacked expertise to opine respondent's mental-health problems were worsening.

¶ 33 At a dispositional hearing, a trial court may decide whether a child's custody and guardianship may be granted to DCFS. The court may commit a child to DCFS's custody and guardianship if it finds (1) the parents are "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, and [(2)] the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents." 705 ILCS 405/2-27(1)(d) (West 2012). We will not overturn a decision on custody and guardianship unless the findings of fact are against the manifest weight of the evidence or the court abused its discretion in selecting an improper dispositional order. *In re Ta. A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1037-38 (2008).

¶ 34 The trial court's order granting custody and guardianship of O.M. to DCFS is not against the manifest weight of the evidence. The evidence establishes after Gayne left O.M. in respondent's care, the well-being of O.M. suffered. O.M.'s grades slid dramatically. O.M. began exhibiting other troubling behaviors, such as shooting animals in his backyard and possibly stealing Vicodin from his mother. O.M., recognizing a change in himself, reported he needed psychological help. O.M. felt lost and hopeless and requested counseling. Given this evidence, the trial court did not err in finding O.M.'s best interests would be jeopardized if he remained in respondent's custody.

¶ 35 We note respondent raises new arguments on appeal. For example, respondent

contends the trial court's decision on custody and guardianship was based on hearsay and Traylor lacked expertise to opine on respondent's mental health, despite not raising these arguments with the trial court. Questions not raised in the trial court are deemed forfeited and may not be argued for the first time on appeal. *McKinney v. Castleman*, 2012 IL App (4th) 110098, ¶ 20, 968 N.E.2d 185. Respondent's new arguments are forfeited.

¶ 36

III. CONCLUSION

¶ 37

We affirm the trial court's judgment.

¶ 38

Affirmed.