2015 IL App (4th) 150475-U

NO. 4-15-0475

FILED
November 12, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 15JA7
KIN CONERLY,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in finding respondent unfit and making the minor a ward of the court.

¶ 2 In January 2015, the State filed a petition for adjudication of neglect and shelter care with respect to K.C., the minor child of respondent, Kin Conerly. In May 2015, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 3 On appeal, respondent argues the trial court erred in finding him unfit and in making K.C. a ward of the court. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2015, the State filed a petition for adjudication of neglect and shelter care with respect to K.C., born in December 2014, the minor child of respondent and Tanisha

Jones. The petition alleged K.C. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)) (count I) because her environment was injurious to her welfare when she resided with her mother in that Jones failed to correct the conditions that resulted in a prior adjudication of parental unfitness involving a different child. Count II alleged K.C. was neglected because her environment was injurious to her welfare when she resided with respondent and/or Jones because the environment exposed the minor to domestic violence.

¶ 6 The trial court entered a temporary custody order, finding probable cause to believe the minor was neglected. The court's order indicated Jones suffered from "mental limitations," which affected her ability to adequately parent. She also had surrendered her parental rights to another child. The court also found respondent had a criminal history involving domestic battery and aggravated domestic battery. The court placed temporary custody with DCFS and allowed both parents supervised visitation.

¶ 7 In April 2015, the trial court conducted the adjudicatory hearing. Jones admitted the allegations in count I. The State agreed to dismiss count II.

¶ 8 In May 2015, the trial court conducted the dispositional hearing. The State relied on a report prepared by Lutheran Social Services (LSS). The report indicated respondent was born in 1971 and resided in a three-bedroom home in Champaign. He had convictions for larceny, obstructing justice, and burglary, as well as arrests for domestic battery, invasion of privacy, obstructing the peace, and kidnapping. DCFS records indicated respondent had a history of domestic disputes in a prior relationship. "The original domestic battery involved [respondent] battering the woman significantly and cutting her legs, hands, shoulders and back with a knife." He was sentenced to 10 years in prison. In October 2012, respondent was arrested

for domestic battery with a woman he had been in a relationship with for two months. An active order of protection against him was set to expire in February 2015.

¶ 9 The LSS report indicated respondent had been consistent and appropriate during his visits with K.C. and he "demonstrate[d] nurturing and affectionate manners." The report stated respondent had been referred for individual counseling and would "need to address his dishonesty and minimizing in the child welfare process, regarding the prior child welfare history, domestic violence and 2012 criminal history."

¶ 10 At the hearing, Carla Wages, an LSS caseworker, testified respondent was a "non-offending parent" in regard to K.C.'s involvement with DCFS. Wages found respondent to be "very nurturing and affectionate during the visits" and noted he and K.C. appeared to be bonded. He had been consistent with visitation and cooperated with LSS and DCFS. Wages stated respondent was able and willing to care for K.C. "at this point."

¶ 11 Wages stated respondent's October 2012 arrest was dismissed and he has had no convictions for more than five years. Respondent completed an assessment that indicated he was not a substance abuser. Wages stated respondent lived with his mother and found the relationship "very supportive."

¶ 12 Respondent testified he worked at Walmart, sometimes more than 40 hours per week. He stated his mother offered to cut back her hours to help him support and take care of K.C. Respondent stated the last time he was in jail was in 2007. He stated he successfully completed an anger-management program while in prison. An April 2015 drug test turned up negative.

¶ 13 On cross-examination, respondent admitted he had been arrested for domestic battery in October 2012. He clarified 2007 was "the last time [he] caught a felony." He was

released from prison in July 2012 and then arrested in October 2012. Since that time, he had not been involved in any kind of domestic-violence counseling.

¶ 14 Rachel Conerly, respondent's mother, testified respondent is "very loving" with K.C., plays with her, and "cares for her a lot." He feeds her and is "very attentive to her." She also stated respondent has "matured a lot" and has been consistent with employment.

¶ 15 The trial court found respondent unfit, for reasons other than financial circumstances alone, to care for, protect, train, and discipline the minor and it would be contrary to the minor's health, safety, and best interests to be in his custody. The court adopted and incorporated its prior findings at the temporary custody and adjudicatory hearings. The court also noted respondent had "a lengthy history of domestic violence and other arrest history," was sentenced to prison for 10 years after violating probation, and had not had domestic-violence counseling or treatment since his discharge from prison. The court adjudged the minor neglected, made her a ward of the court, and placed custody and guardianship with DCFS. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Respondent argues the trial court's finding of unfitness was against the manifest weight of the evidence. We disagree.

¶ 18 In deciding whether a minor should become a ward of the court, the trial court engages in a two-step process. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. First, an adjudicatory hearing on the State's petition for adjudication of wardship is held to determine whether the minor is abused, neglected, or dependent. *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. At this step, the trial court determines "whether the child is neglected, and not whether the parents are neglectful." *In re Arthur H.*, 212 Ill. 2d 441, 467, 819 N.E.2d 734, 749 (2004). If the

court finds the minor abused, neglected, or dependent, then the matter moves to step two, which is the dispositional hearing. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 19 At the dispositional hearing, the trial court determines whether a child may be committed to DCFS custody and guardianship and may grant custody and guardianship to DCFS if it finds (1) the parents are "unfit or are 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)] that 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) (West 2014). "All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing." 705 ILCS 405/2-22(1) (West 2014).

¶ 20 Because biological parents have a superior right to custody, both parents must be found unfit, unable, or unwilling before the children may be placed with DCFS. *In re Ta. A.*, 384 Ill. App. 3d 303, 307, 891 N.E.2d 1034, 1037 (2008). "A parent may be found unfit even if the juvenile petition contains no allegations against him." *In re A.P.*, 2013 IL App (3d) 120672, ¶ 16, 988 N.E.2d 221. Moreover, in proceedings under the Juvenile Court Act, the primary interest is the best interests of the child and "a child's best interest is superior to all other factors, including the interests of the biological parents." *In re J.J.*, 327 Ill. App. 3d 70, 77, 761 N.E.2d 1249, 1255 (2001). Moreover, " '[i]f the "best interests" standard can be attained only by placing the child in the custody of someone other than the natural parent, it is unnecessary for the court to find the natural parent unfit to care for the child.' " *J.J.*, 327 Ill. App. 3d at 77, 761 N.E.2d at 1255 (quoting *In re J.K.F.*, 174 Ill. App. 3d 732, 734, 529 N.E.2d 92, 93 (1988)).

¶ 21 "The standard of proof in a trial court's section 2-27 finding of unfitness that does

not result in a complete termination of all parental rights is a preponderance of the evidence." *In re April C.*, 326 Ill. App. 3d 245, 257, 760 N.E.2d 101, 110 (2001). On appeal, this court will not reverse a trial court's decision unless its factual findings are against the manifest weight of the evidence or the court abused its discretion in choosing an improper dispositional order. *Ta. A.*, 384 Ill. App. 3d at 307, 891 N.E.2d at 1037-38. We note this court "may affirm the trial court's decision on any basis established by the record." *In re K.B.*, 314 Ill. App. 3d 739, 751, 732 N.E.2d 1198, 1208 (2000).

¶ 22 In the case *sub judice*, the evidence showed respondent had a lengthy arrest record and a history of domestic violence. The shelter-care report indicated respondent had been sentenced to 10 years in prison for an attack against a woman in which he "used a knife to cut her legs, hands, shoulder, and back." Just three months after his release from prison, defendant was again arrested for domestic battery. The report indicated defendant grabbed a woman by the neck, choked her, and threw her to the floor, causing an injury above her right eye. Although the charge was dropped, the report suggested it was only dropped because the victim could not be located. As of the date of the report, an order of protection still existed against defendant.

¶ 23 Here, the trial court had ample evidence to find respondent unfit and it did so in its written dispositional order. While respondent testified to completing an anger-management program while in prison, he was arrested for domestic violence within three months of his release. Further, he had not been involved in any kind of domestic-violence counseling since his latest arrest.

¶ 24 We note the evidence indicated respondent loved his daughter, regularly visited with her, and stated he would do "whatever it takes" to raise her. Respondent also tested negative for drug use, was employed, and had been cooperative with LSS. Respondent's actions

bode well for his future desire to be a loving father to his daughter and provide her with a safe, nurturing environment. However, at the time of the dispositional hearing, questions were raised as to whether he was fit to care for, protect, train, or discipline his daughter, and the best interests of K.C. were superior to all other considerations. Given the evidence, and the State's burden of a preponderance of the evidence at the dispositional hearing, we find the trial court's order finding respondent unfit was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

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

¶ 27 Affirmed.