2017 IL App (4th) 170496-U

NO. 4-17-0496

FILED
November 7, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re C.S., a Minor	)	Appeal from
(The People of the State of Illinois,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 16JA75
Rhonda Behnke-Schiebel,	)	
Respondent-Appellant).	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in (1) finding respondent unable to care for her son, (2) denying her motion to continue, and (3) entering its dispositional order.

In November 2016, the State filed a petition for adjudication of wardship with respect to C.S., the minor child of respondent, Rhonda Behnke-Schiebel. In its June 2017 dispositional order, the trial court found respondent unable to care for C.S., made C.S. a ward of the court, and placed custody and continued guardianship with C.S.'s father.

¶ 2 On appeal, respondent argues the trial court erred in (1) finding her unable to care for C.S., (2) denying her motion to continue the dispositional hearing, and (3) entering its dispositional order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2016, the State filed a petition for adjudication of wardship with respect to C.S., born in 2011, the minor child of respondent and Kirk Schiebel. The petition alleged C.S. 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 2016)) because he was living in an injurious environment when in respondent's care in that (1) her behavior raised the concern of medical professionals that C.S. was a victim of "caregiver fabricated illness in a child/Munchausen's syndrome by proxy" and (2) she had unresolved mental-health issues. The petition also alleged C.S. was neglected based on an injurious environment when in Schiebel's care because Schiebel was required to register as a sexual predator but had not completed sex-offender treatment. The petition alleged C.S. was abused pursuant to section 2-3(2) of the Juvenile Court Act (705 ILCS 405/2-3(2) (West 2016)) because respondent inflicted, and/or caused to be inflicted, physical injury to C.S., by other than accidental means, which would likely cause disfigurement, impairment of emotional health, or loss or impairment of any bodily function, as medical professionals have indicated C.S. is a victim of "caregiver fabricated illness in a child/Munchausen's syndrome by proxy." The petition alleged the abuse had subjected C.S. to hundreds of hospitalizations and numerous diagnostic procedures, both invasive and noninvasive, and when respondent was denied access to C.S., his behavior and symptoms improved dramatically. Following a shelter-care hearing, the trial court entered an order granting temporary custody to the Department of Children and Family Services (DCFS).

¶ 5 In April 2017, the State filed a first supplemental petition for adjudication of wardship, alleging C.S. was dependent pursuant to section 2-4(1)(a) of the Juvenile Court Act (705 ILCS 405/2-4(1)(a) (West 2016)) because he was without a parent, guardian, or legal custodian on November 26, 2016, when DCFS removed him from respondent's care due to

safety concerns and Schiebel, who was living in South Carolina, had not had contact with C.S. since he was less than a year old. At the adjudicatory hearing, Schiebel admitted C.S. was dependent based on Schiebel's absence from his life since before C.S.'s first birthday.

¶ 6 On May 31, 2017, respondent filed a motion to continue the dispositional hearing set for June 13, 2017. The motion stated respondent was being evaluated by Dr. Terry Killian, who had not finished his evaluation, and the evaluation would be highly relevant to the disposition of the case. At the June 7, 2017, hearing on the motion, the prosecutor and Schiebel's attorney objected to a continuance. The guardian *ad litem* also objected, arguing it was not in C.S.'s "best interest for this case to be delayed any longer." The trial court denied the motion.

¶ 7 The dispositional report indicated respondent described herself as a "cautious parent." While she acknowledged medical records made it appear as though C.S. had been seen over 400 times at a Chicago children's hospital, she claimed the number was inflated because one visit could include three different appointments. The report stated respondent believed she "has taken good care of [C.S.] and done all she could for him to get the treatment he needs." She blamed her current circumstances on hospital staff and was angry that others believed she was faking C.S.'s illnesses.

¶ 8 Dr. Judy Osgood, a licensed clinical psychologist, evaluated respondent and, according to test results, found her to be "an extremely intelligent person with no cognitive deficits or impairments." Dr. Osgood diagnosed respondent with factitious disorder imposed on another (formerly known as Munchausen syndrome by proxy) and noted respondent "has not accepted responsibility for fabricating [C.S.'s] symptoms and illnesses and remains adamant he has medical issues not being treated." Dr. Osgood also diagnosed respondent with adjustment

disorder with mixed anxiety and depressed mood, as well as parent-child relational problem. Due to respondent's belief that C.S. had untreated medical conditions, which has caused him to endure "excessive and unnecessary medical testing and procedures," Dr. Osgood opined C.S. "needs to be considered at high risk of harm if left unsupervised in his mother's care."

¶ 9 As to Schiebel, the dispositional report noted he pleaded guilty in South Carolina in 2007 to a sex offense after he "accidently downloaded" a video containing child pornography. Part of his sentence required him to register as a sex offender for life. The report indicated he had "no prior or subsequent history of sex offender behavior, and was not required to participate in a sex offender assessment or treatment." The report also stated Schiebel completed a sex-offender risk assessment in December 2016, which indicated his child-pornography possession was "likely an isolated incident"; he had not committed a contact sexual offense; and he was "a low risk to reoffend."

¶ 10 In its dispositional order, the trial court found respondent unable to care for, protect, train, educate, supervise, or discipline the minor and placement with her would be contrary to his health, safety, and best interest because respondent had been unable to accept her mental-health diagnoses, including factitious disorder imposed on another. Moreover, the court found respondent "cannot accept that she had any negative impact" on C.S.

¶ 11 The trial court also found C.S.'s father to be fit, able, and willing to care for C.S., they have established a strong bond with each other, and C.S. voiced a desire to move to South Carolina with him. The court noted Schiebel had been assessed at a low risk to reoffend and sex-offender treatment was not recommended. The court made C.S. a ward of the court and placed custody and continued guardianship with Schiebel. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. The Trial Court's Findings

¶ 14 Respondent argues the trial court's findings she was unable to care for C.S. were against the manifest weight of the evidence. We disagree.

¶ 15 The Juvenile Court Act provides a two-step process the trial court must utilize to decide whether a minor child should be made a ward of the court. *In re A.P.*, 2012 IL 113875, ¶ 18, 981 N.E.2d 336. The first step involves the adjudicatory hearing, where the court considers whether the minor is abused, neglected, or dependent. See 705 ILCS 405/2-18(1) (West 2016); *A.P.*, 2012 IL 113875, ¶ 19, 981 N.E.2d 336. If the court determines the minor is abused, neglected, or dependent, then the court conducts a dispositional hearing, where the court determines whether it is consistent with the health, safety, and best interest of the minor and the public for the minor to be made a ward of the court. *A.P.*, 2012 IL 113875, ¶ 21, 981 N.E.2d 336.

¶ 16 On appeal, a trial court's findings of fact will be overturned only if they are against the manifest weight of the evidence. *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178. "A court's factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where its finding is unreasonable, arbitrary, or not based on the evidence presented." *Al. S.*, 2017 IL App (4th) 160737, ¶ 41, 73 N.E.3d 1178.

¶ 17 In the case *sub judice*, the evidence indicated respondent had caused C.S. to undergo numerous invasive and noninvasive medical procedures, which resulted in long-term monitoring of the child. In each instance, the observations of medical providers differed dramatically from the reports by respondent regarding C.S.'s medical condition, development, and abilities. In spite of the child's developmental advances and improved health once removed

from respondent's care, she remained adamant C.S. continued to suffer from various nonspecific medical conditions, which were being ignored by medical providers.

¶ 18 The dispositional report noted how C.S. was showing no signs while in foster care of the food allergies, medical conditions, and sleeping or eating disorders attributed to him by respondent. Respondent, however, when attending visits with C.S., continued to refuse to acknowledge the dramatic improvements in C.S. and attributed them to the fact that C.S. has had "good periods" in the past, only to become sick again. While respondent loves C.S. and most of her parenting skills are "excellent," the report indicated she "is not able to safely care for [C.S.] at this time because she does not understand how her actions have impacted [C.S.] so she cannot take accountability for those actions."

¶ 19 Dr. Osgood diagnosed respondent with (1) factitious disorder imposed on another, (2) adjustment disorder with mixed anxiety and depressed mood, and (3) parent-child relational problem. Consistent with factitious disorder imposed on another, respondent "has not accepted responsibility for fabricating [C.S.'s] symptoms and illnesses and remains adamant he has medical issues not being treated." Dr. Osgood opined that, due to respondent's "continued stance that her son, [C.S.], has many untreated medical conditions and denial of having had her son endure excessive and unnecessary medical testing and procedures, [C.S.] needs to be considered at high risk of harm if left unsupervised in his mother's care."

¶ 20 The trial court found respondent unable to care for, protect, train, educate, supervise, or discipline C.S. and placement with her would be contrary to his health, safety, and best interest because, despite the fact C.S. has thrived while in care, exhibits no food allergies, does very well in school, has had no issues with the removal of his gastronomy tube and health monitor, and has no medical issues, respondent "cannot accept that she had any negative impact"

on him and is "unable to accept her mental-health diagnoses," including factitious disorder imposed on another.

¶ 21 Here, the evidence indicated respondent had been diagnosed with factitious disorder imposed on another after having brought C.S. to the hospital hundreds of times. Once out of her care, C.S. thrived in his foster home and was eating well. Respondent has refused to accept her diagnoses or her responsibility for fabricating C.S.'s symptoms. Although respondent argues the trial court failed to permit her sufficient time to improve her mental health, her psychologist, therapist, and caseworkers all noted she had no appreciation for or recognition of her mental condition. As Dr. Osgood opined C.S. would be subjected to a high risk of harm if left in respondent's care, we find the court's dispositional findings are not against the manifest weight of the evidence.

¶ 22 B. Motion To Continue

¶ 23 Respondent argues the trial court erred in denying her motion to continue the dispositional hearing. We disagree.

¶ 24 In Illinois, a litigant has no absolute right to a continuance. *In re Tashika F.*, 333 Ill. App. 3d 165, 169, 775 N.E.2d 304, 307 (2002). Section 2-22(4) of the Juvenile Court Act (705 ILCS 405/2-22(4) (West 2016)) pertains to the continuance of a dispositional hearing and states, in part, as follows:

> "On its own motion or that of the State's Attorney, a parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence, if the adjournment is consistent with the health, safety and best interests of the minor, but in no event shall

> continuances be granted so that the dispositional hearing occurs more than 6 months after the initial removal of a minor from his or her home."

¶ 25 In this case, C.S. was placed in a foster home on November 22, 2016. On May 31, 2017, respondent filed a motion to continue the dispositional hearing, which had been set for June 13, 2017. While the time period within which a dispositional hearing must be held can be waived (*In re John C.M.*, 382 Ill. App. 3d 553, 570, 904 N.E.2d 50, 65 (2008)), the State and the guardian *ad litem* objected to a continuance, claiming further delay would not be in the best interest of C.S. Given the statute and the length of time C.S. had been removed from the home, we find the trial court did not err in denying respondent's motion to continue.

¶ 26 C. The Dispositional Order

¶ 27 Respondent argues the trial court's dispositional order was not authorized by statute. We disagree.

¶ 28 In a wardship proceeding, the trial court "may choose only among the dispositional alternatives provided in the statute." *In re M.V.*, 288 Ill. App. 3d 300, 305, 681 N.E.2d 532, 535 (1997). A court has discretion in its selection of dispositional alternatives, and we will not reverse that decision unless "the court abused its discretion by selecting an inappropriate dispositional order." *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 81, 44 N.E.3d 1144; see also *In re J.S.*, 151 Ill. App. 3d 884, 887, 504 N.E.2d 513, 515 (1987) (stating "the choice of dispositional order rests within the sound discretion of the trial court" and the "order will not be overturned absent an abuse of discretion").

¶ 29 According to section 2-23(1)(a)(1) of the Juvenile Court Act (705 ILCS 405/2-23(1)(a)(1) (West 2016)), a minor found to be dependent may be "continued in the custody of his

or her parents, guardian or legal custodian." A minor may be "restored to the custody of the parent *** provided the court shall order the parent *** to cooperate with [DCFS] and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights." 705 ILCS 405/2-23(1)(a)(3) (West 2016). The trial court also has the authority to "enter any other orders necessary to fulfill the service plan." 705 ILCS 405/2-23(3) (West 2016).

¶ 30 In the case *sub judice*, the trial court made C.S. a ward of the court and placed custody and continued guardianship with his father. Instead of "continuing" custody of C.S. with Schiebel, respondent argues the court "restored" C.S. to his father's custody and thereby should have ordered Schiebel to cooperate with DCFS and comply with the terms of an after-care plan. However, given the circumstances of this case, we find a continuation or restoration of custody yields the same result. The court had found Schiebel to be fit, able, and willing to care for C.S. and noted they had established a strong bond with each other. Respondent's contention that custody of C.S. was given to Schiebel "with no DCFS oversight," although true to a certain extent, fails to note the court's intention to retain supervisory control over the parties by maintaining wardship. After a discussion between the court and counsel, the guardian *ad litem* recommended the case be continued "maybe a couple of months and just kind of see where we're at. And I would be comfortable with having a report from dad as to what the status is and, if there's any therapy that's started, where we're at with that." The court stated its hope that Schiebel's custody and guardianship would be "a permanent thing" but thought "the Court ought to retain wardship in order to be able to continue to monitor." Respondent cites no authority for the proposition that such an order must contain an admonishment to cooperate with DCFS or

provide specifically for DCFS oversight in order to be valid. Thus, we find no error in this portion of the court's dispositional order.

¶ 31 Respondent also argues the trial court erred in failing to provide for visitation between her and C.S. She notes the dispositional report indicated weekly visits had occurred and the integrated assessment recommended regular visits to maintain a healthy and secure attachment between mother and son. In its brief, the State conceded the visitation portion of the dispositional order would constitute an abuse of discretion if its effect would deny respondent any supervised visitation with C.S. Thus, the State contended the case should be remanded to enable the court to enter a visitation order.

¶ 32 After briefing in this case, the State filed a motion to suggest its concession on the issue of visitation is now moot. The State noted the trial court entered an order on October 2, 2017, terminating wardship and closing the case. We agree the case is moot. Once the court terminated the wardship and closed the case, nothing regarding visitation is left to review. See *In re C.L.*, 384 Ill. App. 3d 689, 697, 894 N.E.2d 949, 956 (2008) (stating, "after closing the juvenile cases, the visitation order is unenforceable because neither T.L. nor C.L is a ward of the court nor are their juvenile cases still open").

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.